



# Federal Register

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## Part II

### Environmental Protection Agency

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40 CFR Parts 63, 264, and 266

**NESHAP: National Emission Standards for  
Hazardous Air Pollutants: Standards for  
Hazardous Waste Combustors  
(Reconsideration); Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 63, 264 and 266**

[EPA-HQ-OAR-2004-0022; FRL-8215-3]

RIN 2050-AG29

**NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors (Reconsideration)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** On October 12, 2005, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing hazardous waste combustors. Subsequently, the Administrator received four petitions for reconsideration of the final rule. In this proposed rule, EPA is granting reconsideration of and requesting comment on several issues raised in the petitions of the Cement Kiln Recycling Coalition, the Coalition for Responsible Waste Incineration, and the Sierra Club. In addition, EPA is proposing several amendments and corrections to the final rule to clarify some compliance and monitoring issues raised by several entities affected by the final rule.

**DATES:** *Comments.* Written comments must be received by October 23, 2006.

*Public Hearing.* A public hearing will be held on September 21, 2006. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0022, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Fax:* 202-566-1741.

- *Mail:* U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

- *Hand Delivery:* In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20004. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comments include information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. Send or deliver information identified as CBI to only the following address: Ms. LaShan Haynes, RCRA Document Control Officer, EPA (Mail Code 5305W), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1200 Pennsylvania Avenue, Washington DC, 20460. Clearly mark the part or all of the information that you claim to be CBI. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA-HQ-OAR-2004-0022, EPA West Building, Room B-102, 1301 Constitution Ave., 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 HQ EPA Docket Center telephone number is (202) 566-1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. A reasonable fee may be charged for copying docket materials.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to [www.regulations.gov](http://www.regulations.gov) are not affected by the flooding and will remain the same.

*Public Hearing.* The public hearing will run from 9 a.m. to 5 p.m., Eastern standard time, and will be held at the Two Potomac Yard building, 2733 S. Crystal Drive, Arlington, Virginia, 22202. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. Frank Behan at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice. If no one contacts Mr. Behan in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of information related to the public hearing.

**FOR FURTHER INFORMATION CONTACT:** For more information on this rulemaking, contact Frank Behan at (703) 308-8476, or [behan.frank@epa.gov](mailto:behan.frank@epa.gov), Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

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

- I. General Information
  - A. Does This Proposed Rule Apply to Me?
  - B. How Do I Obtain a Copy of This Document and Other Related Information?
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  - D. Tie-Breaking Procedure for New Source Standards
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- F. Dioxin/Furan Standard for Incinerators With Dry Air Pollution Control Devices
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  - A. Sunset Provision for the Interim Standards
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  - E. Performance Test Waiver for Sources Subject to Hazardous Waste Thermal Concentration Limits
  - F. Averaging Method When Calculating 12-Hour Rolling Average Thermal Concentration Limits
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  - H. Calculating Rolling Averages
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  - J. Expressing Particulate Matter Standards Using the International System of Units (SI)
  - K. Mercury Standards for Cement Kilns
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- VI. Revised Time Lines

- VII. Technical Corrections and Other Clarification
  - A. What Typographical Errors Would We Correct?
  - B. What Citations Would We Correct?
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- VIII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act of 1995
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act

**I. General Information**

*A. Does This Proposed Rule Apply to Me?*

Categories and entities potentially affected by this action include:

| Category   | NAICS code               | SIC code | Examples of potentially regulated entities         |
|--|--------------------------|----------|--|
| Any industry that combusts hazardous waste as defined in the final rule. | 562211 .....             | 4953     | Incinerator, hazardous waste.                      |
|  | 327310 .....             | 3241     | Cement manufacturing, clinker production.          |
|  | 327992 .....             | 3295     | Ground or treated mineral and earth manufacturing. |
|  | 325 .....                | 28       | Chemical Manufacturers.                            |
|  | 324 .....                | 29       | Petroleum Refiners.                                |
|  | 331 .....                | 33       | Primary Aluminum.                                  |
|  | 333 .....                | 38       | Photographic equipment and supplies.               |
|  | 488, 561, 562 .....      | 49       | Sanitary Services, N.E.C.                          |
|  | 421 .....                | 50       | Scrap and waste materials.                         |
|  | 422 .....                | 51       | Chemical and Allied Products, N.E.C.               |
|  | 512, 541, 561, 812 ..... | 73       | Business Services, N.E.C.                          |
|  | 512, 514, 541, 711 ..... | 89       | Services, N.E.C.                                   |
|  | 924 .....                | 95       | Air, Water and Solid Waste Management.             |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. 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.

*B. How Do I Obtain a Copy of This Document and Other Related Information?*

In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the Worldwide Web (WWW). Following the Administrator's signature, a copy of this document will be posted on the WWW at <http://www.epa.gov/hwcmact>. This Web site also provides other information related to the NESHAP for hazardous waste combustors.

*C. What Should I Consider as I Prepare My Comments for EPA?*

*Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not

contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

## II. Background

Section 112 of the CAA requires that we establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing major sources. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area under common control that emit or have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP. 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 MACT (for Maximum Achievable Control Technology). See CAA section 112(d)(2).

The so-called MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are 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 emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory).

In developing MACT standards, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements. See CAA section 112(d)(2). We call these standards beyond-the-floor standards.

We proposed NESHAP for hazardous waste combustors on April 20, 2004 (69 FR 21198), and we published the final rule on October 12, 2005 (70 FR 59402). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We received over 75 public comment letters on the proposed hazardous waste combustor rule. Comments were submitted by industry trade associations, owners and operators of hazardous waste combustors, environmental groups, and State regulatory agencies and their representatives. We summarized the major public comments on the proposed rule and our responses to public comments in the preamble to the final rule and in a separate, supporting “response to comments” document. See 70 FR at 59426 and docket items EPA–HQ–OAR–2004–0022–0437 through 0445.

Following promulgation of the hazardous waste combustor final rule, the Administrator received four petitions for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, from Ash Grove Cement Company, the Cement Kiln Recycling Coalition (CKRC), the Coalition for Responsible Waste Incineration (CRWI), and the Sierra Club.<sup>1</sup> Under this section of the

<sup>1</sup> These petitions are included in the docket for this proposal. See items EPA–HQ–OAR–2004–0022–0516 thru 0519. EPA also received petitions from Ash Grove Cement Company and the CKRC, Continental Cement Company, and Giant Cement Holding, Inc. requesting that we stay the effective date of the particulate matter standard for new cement kilns. See items EPA–HQ–OAR–2004–0022–0521 and 0523. In a notice published on March 23, 2006, EPA granted a temporary three-month administrative stay while the particulate

CAA, the Administrator must initiate reconsideration proceedings with respect to provisions that are of central relevance to the rule at issue if the petitioner shows that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period but within the period for filing petitions for judicial review.

On March 23, 2006, EPA published a proposed rule granting reconsideration of one issue—the particulate matter (PM) standard for new cement kilns—raised in the petitions of Ash Grove Cement Company and CKRC. See 71 FR 14665. We intend to take final action on this reconsideration issue as expeditiously as possible.

## III. Summary of This Action

In today’s notice, we are granting reconsideration of certain issues raised by petitioners. We summarize below our responses to petitions for reconsideration and provide detailed discussions in Section IV of this preamble of the petitions we are granting. We also are today proposing other amendments to correct or clarify provisions of the final rule. See discussion in Section V of the preamble. We also are presenting revised pictorial time lines (from those provided in the final rule) that highlight various milestones of the MACT compliance process. See discussion in Section VI of the preamble. Finally, we are providing advance notice of technical corrections that we plan to promulgate when we take final action on the amendments proposed today. See discussion in Section VI below.

We are granting reconsideration of several issues (that are of central relevance to the rule’s outcome) raised by Sierra Club, the Cement Kiln Recycling Coalition (CKRC),<sup>2</sup> and the Coalition for Responsible Waste Incineration (CRWI). Accordingly, we are requesting comment on specific provisions of Subpart EEE of 40 CFR part 63: (1) Subcategorization of liquid fuel boilers; (2) correcting total chlorine emissions data below 20 ppmv; (3) use of PS–11 as a reference to develop alarm set-point extrapolation procedures for particulate matter detection systems

matter standard is under reconsideration. See 71 FR 14655. In addition, five petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia Circuit by the following entities: Ash Grove Cement Company, CKRC, CRWI, the Environmental Technology Council, and the Sierra Club.

<sup>2</sup> Ash Grove Cement Company also submitted to EPA a petition for reconsideration. Ash Grove Cement’s petition incorporated by reference the petition of the CKRC.

(PMDS); (4) approach to identify the best performing single source when two or more sources are tied for the lowest aggregate SRE/feedrate score; (5) beyond-the-floor analyses to consider multiple HAP that are controlled by a single control mechanism; (6) use of post-proposal data to identify the dioxin/furan standard for incinerators with dry air pollution control devices or waste heat boilers; and (7) three provisions of the health-based compliance alternative for total chlorine. See discussion of these topics in Section IV below.

We are proposing changes to several other provisions in light of petitioners' concerns or upon our own review, and also are requesting comment on these proposed changes.

We are not reconsidering the remaining issues raised by Sierra Club and CKRC<sup>3</sup> and have included in the docket to this rulemaking letters explaining our rationale to deny reconsideration. In summary:

1. We deny Sierra Club's petition regarding our use of normal emissions data, in addition to compliance test and in-between data, in the regression analysis to calculate the baghouse universal variability factor (UVF) for particulate matter. Among other things, including normal data results in imputing a lower standard deviation for particulate matter emissions variability, rather than a higher standard deviation as Sierra Club incorrectly surmised.

2. We deny CKRC's petition regarding its concern that subcategorizing liquid fuel boilers using a waste heating value criterion of 10,000 Btu/lb to distinguish between boilers that are burning waste entirely for energy recovery versus boilers that are burning waste fuels at least in part for treatment is inconsistent with the Agency's policy<sup>4</sup> that wastes with a heating value greater than 5,000 Btu/lb are burned for energy recovery. The 5,000 Btu/lb criterion for burning

for energy recovery is a policy providing guidance on when combustors are considered to burn hazardous waste as fuel that carries specific regulatory implications. This criterion is not in any way affected by the 10,000 Btu/lb criterion for subcategorizing liquid fuel burners to establish MACT standards. The 10,000 Btu/lb criterion divides liquid fuel burners into two categories based on the heating value of the hazardous waste they burn, and is in no way intended to replace the longstanding 5,000 Btu/lb criterion for energy recovery.

3. We deny Sierra Club's petitions to reconsider the following provisions because the additional reasons we provide in the final rule to support the provisions, or the information we use to support the provision, are corroborative of information and rationales already presented for public comment at proposal and therefore do not justify reconsideration. The additional reasons embellish the rationale we presented at proposal, generally in response to comments.

- Use of particulate matter as a surrogate for nonenumerated metals;
- Use of CO/HC as a surrogate for dioxin/furan and as a surrogate for non-dioxin/furan organic HAP for Phase II sources
- Use of variability factors in setting MACT Floors;
- Approach to establishing the dioxin/furan standard for cement kilns and for incinerators equipped with a wet particulate matter air pollution control device or no air pollution control device;
- Subcategorization of incinerators to establish separate dioxin/furan standards for incinerators equipped with a dry particulate matter air pollution control device and those without a dry particulate matter air pollution control device;
- Approach to establishing the mercury standard for cement kilns using waste concentration data;
- Approach to evaluating a beyond-the-floor standard for total chlorine for cement kilns; and
- Decision not to promulgate beyond-the-floor standards for total chlorine for lightweight aggregate kilns and solid fuel boilers using dry scrubbing.

4. We deny Sierra Club's petition that we reconsider the use of CO/HC as surrogates for non-dioxin/furan organic HAP for Phase I sources in this rulemaking. As we explained at proposal, we view the carbon monoxide, hydrocarbon, and destruction and removal efficiency standards as unaffected by the Court's vacature of the September 1999 "challenged

regulations" (see *Cement Kiln Recycling Coalition v. EPA*, 255 F. 3d 855, 872 (D.C. Cir. 2001)) for Phase I sources, since these rules were not challenged. See 69 FR at 21221. We therefore did not repropose those standards, and did not consider comments that they be revised as part of this rulemaking.<sup>5</sup>

#### IV. Discussion of Issues Subject to Reconsideration

Stakeholders who would like for us to reconsider comments they submitted to us previously and that are relevant to the reconsideration issues presented below should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process. We plan to take final action on today's reconsideration as expeditiously as possible.

##### A. Subcategorization of Liquid Fuel Boilers by Heating Value

In the final rule, we redefined the liquid fuel boiler subcategory into two separate boiler subcategories based on the heating value of the hazardous waste they burn: Those that burn waste with a heating value below 10,000 Btu/lb, and those that burn hazardous waste with a heating value of 10,000 Btu/lb or greater. See 70 FR at 59422. Sources would shift from one subcategory to the other depending on the heating value of the hazardous waste burned at the time. *Id.* at 59476.

Sierra Club petitioned for reconsideration stating that EPA developed this subcategorization approach after the period for public comment and, thus, did not provide notice and opportunity for public comment.<sup>6</sup> We are granting reconsideration of this provision because we determined that subcategorization of liquid fuel boilers was appropriate in response to comments on the proposed rule, after the period for public comment as Sierra Club states. Furthermore, subcategorization significantly impacted the development of the emission standards for liquid fuel boilers. Consequently, we are accepting further comment on this approach to subcategorization but are not proposing to change the approach. We believe the

<sup>3</sup>Note that, as discussed in Section II above, we previously granted CKRC's request to reconsider the particulate matter standard for new cement kilns given that new data indicate the single best performing source could not achieve the new source standard. Accordingly, we issued a stay of the new source standard for particulate matter for cement kilns (71 FR 14655 (March 23, 2006)) and proposed to revise the new source standard for particulate matter for cement kilns and make corresponding revisions to the new source standards for incinerators and liquid fuel boilers (71 FR 14665 (March 23, 2006)).

<sup>4</sup>See 48 FR at 49166-167 (March 16, 1983). Note that we discuss in Section IV.A.2 below that, under the policy, we presume wastes with a heating value of 5,000 Btu/lb or greater are burned for energy recovery in a boiler or industrial furnace and acknowledge that sources may be able to document that wastes with a heating value below 5,000 Btu/lb are also burned for energy recovery in particular situations.

<sup>5</sup>Sierra Club has also filed a petition for judicial review that challenges the use of CO/HC as a surrogate for non-dioxin/furan for Phase II sources. Although we believe this surrogate approach is appropriate, if our position is not upheld we would rethink this surrogate approach for Phase I sources as well because the rationale is the same for all hazardous waste combustor source categories.

<sup>6</sup>See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section II, docket item EPA-HQ-OAR-2004-0022-0517.

subcategorization approach is warranted for the reasons provided in the final rule and restate them below. Nonetheless, we are open to comment and will determine whether a change is warranted.

#### 1. Rationale for Subcategorization

We explained in the final rule that we selected normalizing parameters for emission standards that best fit the input to the combustion device. See 70 FR at 59451. We used a thermal normalizing parameter (*i.e.*, expressing the standards in terms of amount of HAP contributed by hazardous waste per thermal content of hazardous waste) where hazardous waste is being used in energy-recovery devices as a fuel. This avoided the necessity of subcategorizing based on unit size.

At proposal we used the thermal emissions format for the liquid fuel boiler standards. See 69 FR at 21283. Commenters on the proposed rule pointed out, however, that some liquid fuel boilers burn lower Btu hazardous waste because that is the only waste available, and those boilers with waste that has a low heating value are, in their words, “penalized,” compared to those boilers with waste that has a high(er) heating value. Also, since these are not commercial combustion units, they normally lack the opportunity to blend wastes of different heating values to result in as-fired high heating value fuels. If all liquid fuel boiler standards were normalized by hazardous waste heating value, sources with lower heating value waste must either reduce the mass concentration of HAP or increase the waste fuel heating value (or increase the system removal efficiency) compared to sources with wastes having the same mass concentration of HAP but higher heating value. See 70 FR at 59475. These measures would be problematic, however. Increasing the waste fuel heating value or decreasing the mass concentration of HAP in the waste is generally not possible because boilers burn the waste generated by their facility—they are not commercial combustion units. Decreasing the mass emission rate of HAP by increasing the system removal efficiency would require boilers burning lower heating value waste to incur costs to control HAP mass emission rates to levels lower than required for boilers at facilities that happen to generate waste with a higher heating value.

Moreover, the thermal normalizing parameter is not well suited for a hazardous waste that is not burned entirely for its fuel value. In cases where the lower heating value waste is burned, the boiler may be serving in part as a

treatment device for the lower heating value hazardous waste. When this occurs, the better normalizing parameter is the unit’s gas flow (a different means of accounting for sources of different size), where the standard is expressed as amount of HAP per volume of gas flow (the same normalizing parameter used for most of the other standards promulgated in the final rule.)

Given these concerns, we established two subcategories among the liquid fuel boilers: Those burning high and those burning low heating value hazardous waste. The normalizing parameter for sources burning lower energy hazardous waste is the same parameter used for the other hazardous waste treatment devices, gas flow rate, so that the standard would be expressed as concentration of HAP per volume of gas flow (a concentration-based form of the standard.) The normalizing parameter for sources burning higher energy content hazardous waste is the thermal parameter used for energy recovery devices, such as cement kilns and lightweight aggregate kilns. For the purposes of calculating MACT floors, the best performers are drawn from those liquid fuel boilers burning lower energy hazardous waste for the lower heating value subcategory, and from those liquid fuel boilers burning higher energy hazardous waste for the higher heating value subcategory. (See Section 23.2 of Volume III of the Technical Support Document for more information.)

Moreover, liquid fuel boilers are not irrevocably placed in one or the other of these subcategories. Rather, the source is subject to the standard for one or the other of these subcategories based on the as-fired heating value of the hazardous waste it burns at a given time. Thus, when the source is burning for energy recovery, then the thermal emissions-based standards apply. When the source is burning at least in part for thermal destruction, then the concentration based standard apply. This approach is similar to how we have addressed the issue of normalization in other rules where single sources switch back and forth among inputs that are sufficiently different to warrant separate classification.

#### 2. Selection of the Heating Value Threshold

We next considered what an appropriate as-fired heating value would be for each liquid fuel boiler subcategory and adopted a value of 10,000 Btu/lb as the threshold for subcategorization. This is approximately the heating value of commercial liquid fossil fuels. See 63 FR at 33782, 33788

(June 19, 1998). It is also typical of current hazardous waste burned for energy recovery. *Id.* Moreover, EPA has used this value in its comparable fuel specification as a means of differentiating fuels from waste. See *id.* and Table 1 to 40 CFR 261.38, showing that EPA normalizes all constituent concentrations to a 10,000 Btu/lb level in its specification for differentiating fuels from wastes.

We next examined the liquid waste fuel being burned at cement kilns and lightweight aggregate kilns, that burn hazardous waste fuels to drive the process chemistry to produce products, to cross-check whether 10,000 Btu/lb is a reasonable demarcation value for subcategorizing liquid fuel boilers for the purposes of this MACT. We observed that 10,000 Btu/lb in practice is the minimum heating value (or close to the minimum value) found in burn tank and test report data we have for cement kilns and lightweight aggregate kilns.<sup>7</sup> Therefore, we believe the cement kiln and light weight aggregate kiln data confirm that this is an appropriate cutpoint for subcategorizing boilers, since cement kilns and lightweight aggregate kilns are energy recovery devices that blend hazardous wastes into a consistent, high heating value fuel for energy recovery in their manufacturing process.

We then separated the liquid fuel boiler emissions data we had into two groups, sources burning hazardous waste fuel with less than 10,000 Btu/lb and all other liquid fuel boilers, and performed separate MACT floor analyses. (See Sections 13.4, 13.6, 13.7, 13.8, and 22 of Volume III of the Technical Support Document.) We calculated concentration-based MACT standards for these sources from their respective mercury, semivolatile metals, chromium, and total chlorine data.

The regulatory language implementing this subcategorization approach is provided in §§ 63.1209(l)(1)(ii), 63.1209(n)(2)(v), 63.1209(o)(1)(ii), and 63.1217.

#### B. Correcting Total Chlorine (TCI) Data to 20 ppmv

In the final rule, we corrected all the total chlorine measurements in the data base that were below 20 ppmv to account for potential systemic negative biases in the Method 0050 data. See 70

<sup>7</sup> The cement kiln burn tank data and test report data shows the minimum heating values of 9,900 and 10,000 Btu/lb, respectively, for the hazardous waste. The minimum lightweight aggregate kiln heating values for hazardous waste was 10,000 Btu/lb, excluding the Norlite source.

FR at 59427–29.<sup>8</sup> Sierra Club petitioned for reconsideration stating that EPA corrected the total chlorine measurements in response to comments on the proposed rule—after the period for public comment—and used the corrected data to revise the total chlorine emission standards.<sup>9</sup>

We are granting reconsideration of our approach to account for these method biases to assess the true performance of the best performing sources. Reconsideration is appropriate because, as Sierra Club states, we determined to correct the total chlorine data after the period for public comment on the proposed rule, and correcting the data significantly impacted the development of the total chlorine emission standards.

To account for the bias in the method, we corrected all total chlorine emissions data that were below 20 ppmv to 20 ppmv. We accounted for within-test condition emissions variability for the corrected data by imputing a standard deviation that is based on a regression analysis of run-to-run standard deviation versus emission concentration for all data above 20 ppmv. This approach of using a regression analysis to impute a standard deviation is similar to the approach we used to account for total variability (i.e., test-to-test and within test variability) of PM emissions for sources that use fabric filters.

Under today's reconsideration notice, we are accepting further comment on this approach to address method bias but are not proposing to change the approach. We believe this data correction approach is warranted for the reasons provided in the final rule and restate them below. Nonetheless, we are open to comment and will determine whether a change is warranted.

#### 1. Effect of Moisture Vapor

Commenters on the proposed rule implied that stack gas with high levels of gas phase water vapor will inherently have the potential to be biased low, particularly at emissions less than 20 ppmv. We concluded that there is no basis for claiming that water vapor, per se, causes a bias in SW-846 Method 0050 or its equivalent, Method 26A. Condensed moisture (i.e., water droplets), however, can cause a bias because it can dissolve hydrogen chloride in the sampling train and prevent it from being captured in the impingers if the sampling train is not properly purged. Water droplets can

potentially be present due to entrainment from the wet scrubber, condensation in cooler regions of the stack along the stack walls, and entrainment from condensed moisture dripping down the stack wall across the inlet duct opening.

Although Method 0050 addresses the water droplet issue by use of a cyclone and 45 minute purge, a study by Steger<sup>10</sup> concludes that a 45 minute purge is not adequate to evaporate all water collected by the cyclone in stacks with a total moisture content (vapor and condensed moisture) of 7 to 9%. At those moisture levels, Steger documented the negative bias that commenters reference. See 70 FR at 59427. Steger's recommendation was to increase the heat input to the sample train by increasing the train and filter temperature from 120 °C (248 °F) to 200 °C (392 °F). We agree that increasing the probe and filter temperature will provide a better opportunity to evaporate any condensed moisture, but another solution to the problem is to require that the post-test purge be run long enough to evaporate all condensed moisture. That is the approach used by Method 26A, that EPA promulgated after Method 0050, and that sources must use to demonstrate compliance with the final standards. Method 26A uses an extended purge time rather than elevating the train temperature to address condensed moisture because that approach can be implemented by the stack tester at the site without using nonstandard equipment.

We attempted to quantify the level of condensed moisture in the Steger study and to compare it to the levels of condensed moisture that may be present in hazardous waste combustor stack gas. This would provide an indication if the bias that Steger quantified with a 45 minute purge might also be applicable to some hazardous waste combustors. We concluded that this comparison would be problematic, however, because: (1) Given the limited information available in the Steger paper, it is difficult to quantify the level of condensed moisture in his gas samples; and (2) we cannot estimate the levels of condensed moisture in hazardous waste combustor stack gas because, even though condensed moisture may have been present during a test, method protocol is to report the saturation moisture level only (i.e., the amount of water vapor present), and not

the total moisture content (i.e., both condensed and vapor phase moisture).

We did conclude, however, that, if hazardous waste combustor stack gas were to contain the levels of condensed moisture present in the gas that Steger tested, the 45 minute purge required by Method 0050 would not be sufficient to avoid a negative bias. We also concluded that this is potentially a practical issue and not merely a theoretical concern because, as commenters note, hazardous waste combustors that use wet scrubbers are often saturated with water vapor that will condense if the flue gas cools.

#### 2. Data From Wet Stacks When a Cyclone Was Not Used

The data for total chlorine underlying EPA's proposal came exclusively from compliance testing. Commenters on the proposed rule stated that Method 0050 procedures for addressing water droplets (adequate or not, as discussed above) were not followed in many cases because a low bias below 20 ppmv was not relevant to demonstrating compliance with standards on the order of 100 ppmv. We do not know which data sets may be problematic because, as previously stated, the moisture concentration reported was often the saturation (vapor phase only) moisture level and not the total (vapor and liquid) moisture in the flue gas. We also have no documentation that a cyclone was used—even in situations where the moisture content was documented to be above the dew point. We therefore concluded that all data below 20 ppmv from sources controlled with a wet scrubber are suspect and should be corrected.

#### 3. Potential Bias Due to Filter Affinity for Hydrogen Chloride

Studies by the American Society of Testing and Materials indicate that the filter used in the Method 0050 train (and the M26/26A trains) may adsorb/absorb hydrogen chloride and cause a negative bias at low emission levels. (See ASTM D6735–01, section 11.1.3 and “note 2” of section 14.2.3.) This inherent affinity for hydrogen chloride can be satisfied by preconditioning the sampling train for one hour. None of the tests in our database were preconditioned in such a manner.

We are normally not concerned about this type of bias because we would expect the bias to apply to all sources equally (e.g., wet or dry gas) and for all subsequent compliance tests. In other words, we are ordinarily less concerned if a standard is based on biased data, as long as the means by which the standard was developed and the means

<sup>8</sup> See also USEPA, “Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,” Section 5.5, September 2005.

<sup>9</sup> See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section IV, docket item EPA–HQ–OAR–2004–0022–0517.

<sup>10</sup> Steger, J.L., et al., “Laboratory Evaluation of Method 0050 for Hydrogen Chloride”, Proc of 13th Annual Incineration Conference, Houston, TX, May 1994.

of compliance would experience identical bias (since the level of control would be reflected accurately). However, because we corrected the wet gas measurements below 20 ppmv to address the potential low bias caused by condensed moisture, this correction also corrected for any potential bias caused by the filter's inherent affinity for hydrogen chloride. This resulted in a data set that is only partially corrected for this issue—sources with wet stacks were corrected for this potential bias while sources with dry stacks were not corrected. To address this unacceptable mix of potentially biased and unbiased data (i.e., dry gas data biased due to affinity of filter for hydrogen chloride and wet gas data corrected for condensed moisture and affinity of filter for hydrogen chloride), we also corrected total chlorine measurements from dry gas stacks (i.e., sources that do not use wet scrubbers).

#### 4. Deposition of Alkaline Particulate on the Filter

Commenters on the proposed rule were also concerned that hydrogen chloride may react with alkaline compounds from the scrubber water droplets that are collected on the filter ahead of the impingers. Commenters suggested this potential cause for a low bias at total chlorine levels below 20 ppmv is another reason not to use measurements below 20 ppmv to establish the standards. Although alkaline particulate deposition on the method filter causing a negative bias is a much greater concern for sources that have stack gas containing high levels of alkaline particulate (e.g., cement kilns, sources equipped with dry scrubbers), we agreed with commenters that this may be of concern for all sources equipped with wet scrubbers. Our approach to correct all data below 20 ppmv addressed this concern.

#### 5. Decision Unique to Hazardous Waste Combustors

We note that the rationale for correcting total chlorine data below 20 ppmv to account for the biases discussed above is unique to the hazardous waste combustor MACT rule. Some sources apparently did not follow Method 0050 procedures to minimize the low bias caused by condensed moisture for understandable reasons. Even if sources had followed Method 0050 procedures to minimize the bias (i.e., cyclone and 45 minute purge) there still may have been a substantial bias because of insufficient purge time, as Steger's work may indicate. We note that the total chlorine stack test method used by sources other than hazardous

waste combustors—Method 26A—requires that the cyclone and sampling train be purged until all condensed moisture is evaporated. We believed it was necessary to correct our data below 20 ppmv data because of issues associated exclusively with Method 0050 and how it was used to demonstrate compliance with these sources.

#### 6. Determining Variability for Data at 20 ppmv

Correcting those total chlorine data below 20 ppmv to 20 ppmv brought about a situation identical to the one we confronted with nondetect data. See 70 FR at 59464–66. The corrected emissions data for the MACT pool of best performing source(s) were now generally the same values—20 ppmv. This had the effect of understating the variability associated with these data. To address this concern, we took an approach similar to the one we used to determine variability of PM emissions for sources equipped with a fabric filter. In that case, we performed a linear regression on the data, charting variability against emissions, and used the variability that resulted from the linear regression analysis as the variability for the sources' average emissions. In this case, most or all of the incinerator and liquid fuel boiler sources in the MACT pool had (corrected) average emissions of TCl at or near 20 ppmv. We therefore performed a linear regression on the total chlorine data charting average test condition results above 20 ppmv against the variability associated with that test condition. The variability associated with 20 ppmv was the variability we used for incinerator and liquid fuel boiler data sets affected by the 20 ppmv correction.

We also considered using the statistical imputation approach we used for nondetect values. See 70 FR at 59464. The statistical imputation approach for correcting data below 20 ppmv without dampening variability would involve imputing a value between the reported value and 20 ppmv because the "true" value of the biased data would lie in this interval. This approach would be problematic, however, given that many of the reported values were much lower than 20 ppmv; our statistical imputation approach would tend to overestimate the run to run variability. Consequently, we concluded that a regression analysis approach would be more appropriate. A regression analysis is particularly pertinent in this situation because: (1) We consider data above 20 ppmv used to develop the regression to be

unbiased; and (2) all the corrected data averages for which we imputed a standard deviation from the regression curve are at or near 20 ppmv. Thus, any potential concern about downward extrapolation from the regression was minimized.

We note that, although a regression analysis is appropriate to estimate run-to-run variability for the corrected total chlorine data, we could not use a linear regression analysis to address variability of nondetect values. To estimate a standard deviation from a regression analysis, we would need to know the test condition average emissions. This would not be feasible, however, because some or all of the run measurements for a test condition are nondetect. In addition, we were concerned that a regression analysis would not accurately estimate the standard deviation at low emission levels because we would have to extrapolate the regression downward to levels where we have few measured data (i.e., data other than nondetect). Moreover, the statistical imputation approach is more suitable for handling nondetects because the approach calculates the run-to-run variability by taking into account the percent nondetect for the emissions for each run.<sup>11</sup> A regression approach would be difficult to apply particularly in the case of test conditions containing partial nondetects or a mix of detect and nondetect values. Given these concerns with using a regression analysis to estimate the standard deviation of test conditions with runs that have one or more nondetect (or partial nondetect) measurements, we concluded that the statistical imputation approach best assures that the calculated floor levels account for run-to-run emissions variability.

#### C. Use of PS-11 and Procedure 2 as Guidance for Extrapolating the Alarm Set-Point of a Particulate Matter Detection System (PMDS)

Petitioner CKRC asks that EPA reconsider its references to Performance Specification 11 (PS-11) and Procedure 2 in the particulate matter detection system (PMDS) provisions of the final rule. We are granting reconsideration because we developed the procedures for extrapolating the alarm set-point for PMDS, that included references to PS-11 and Procedure 2, in response to comments on the proposed rule and after the period for public comment. See 70 FR at 59490.

<sup>11</sup> For multi-constituent HAP (e.g., semi-volatile metals) the emissions for a run could be comprised of fully detected values for some HAP and detection limits for other HAP that were nondetect.



CKRC also states that the reference to PS-11 for particulate matter CEMS (40 CFR part 60, appendix B) and Procedure 2 (Appendix F, Part 60) for use as guidance to implement provisions to extrapolate the alarm set-point of a PMDS may effectively prevent its members from utilizing this option due to significant technical difficulties and excessive costs.<sup>12</sup> See § 63.1206(c)(9)(iii)(B). CKRC further states that PS-11 and Procedure 2 contain a number of problems as they would apply to cement kilns. CKRC's petition does not identify any such problems or technical difficulties, however, and only notes that it has filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging EPA's final rule adopting PS-11 and Procedure 2, which case is being held in abeyance.

Finally, CKRC states that use of a regression analysis approach to extrapolate the alarm set-point is not justified or necessary to establish an approximate correlation between the particulate matter detector system response and particulate matter concentrations. CKRC suggests that an alternative approach would be based on a linear relationship passing through zero and the mean of the PM comprehensive performance test results.

When we reviewed the procedures in the final rule for establishing the set-point in light of CKRC's concerns regarding use of a regression analysis to extrapolate the set-point and use of PS-11 and Procedure 2 as guidance, we identified several shortcomings of the final rule: (1) More than the required five test runs would be needed to perform a meaningful statistical analysis of alternative correlation models to identify the most appropriate model; (2) a general reference to use PS-11 and Procedure 2 as guidance is overly broad given that those provisions pertain to PM continuous emissions monitors (CEMS) and would not be applicable to PMDS absent a specific PMDS requirement; and (3) the final rule contemplated establishing the set-point after the comprehensive performance test and, thus, did not provide for operations under the Documentation of Compliance. Consequently, we are today proposing to revise the provisions for establishing the alarm set-point by extrapolation by: (1) Adding procedures to establish the alarm set-point for operations under the Documentation of

Compliance; (2) revising procedures to extrapolate the alarm set-point for operations under the Notification of Compliance; and (3) providing specific rather than generic references to PS-11 and Procedure 2 provisions that must be followed to extrapolate the alarm set-point.

#### 1. Summary of the PMDS Provisions in the Final Rule

The final rule established revised procedures for establishing the alarm set-point if you elect to use a particulate matter detector system (PMDS) in lieu of site-specific operating parameter limits for compliance assurance<sup>13</sup> for sources equipped with electrostatic precipitators and ionizing wet scrubbers, and in lieu of a bag leak detection system for sources equipped with a baghouse. See 70 FR at 59424 and 59490-91, and § 63.1206(c)(9).<sup>14</sup> The rule explicitly allows you to maximize controllable operating parameters during the comprehensive performance test to account for emissions variability by, for example, detuning the air pollution control device (APCD) or spiking ash to establish an alarm set-point that should be routinely achievable considering controllable parameters. If you elect to use a PMDS, the rule requires you to establish the set-point either as the average of the test condition run average detector responses during the comprehensive performance test or as the extrapolation of the detector response after approximating the correlation between the detector response and particulate matter emission concentrations. You may extrapolate the detector response up to a response value that corresponds to 50% of the particulate matter emission standard or 125% of the highest particulate matter concentration used to develop the correlation, whichever is greater. To establish an approximate correlation of the detector response to particulate matter emission concentrations, the rule recommends that you use as guidance Performance Specification-11 for particulate matter CEMS (40 CFR part 60, appendix B), except that you need conduct only 5 runs to establish the initial correlation rather than a minimum of 15 runs required by PS-11. The final rule also recommends that, for quality assurance, you should use Procedure 2 of

Appendix F, Part 60, and the manufacturer's recommended procedures for periodic quality assurance checks and tests, except that: (1) You must conduct annual Relative Response Audits as prescribed by Procedure 2; and (2) you need only conduct Relative Response Audits on a 3-year interval after passing two sequential annual Relative Response Audits.

#### 2. Proposed Procedures To Establish the Set-Point for Operations Under the Documentation of Compliance

The final rule was silent on how to establish the set-point for operations under the Documentation of Compliance (*i.e.*, in the interim between the compliance date and submission of the Notification of Compliance subsequent to the comprehensive performance test). Under today's proposal, we would add a new provision that requires you to obtain a minimum of three pairs of reference method data and PMDS data, establish a zero point correlation value, and assume a linear correlation model to extrapolate the alarm set point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. The extrapolated emission concentration could not exceed the PM emission standard.

This is a reasonable approach to establish an interim set-point for operations prior to conducting the comprehensive performance test to document compliance with the emission standards. Requiring the additional testing needed to obtain enough test runs to identify the actual correlation mode—approximately 12 test runs—would discourage use of PMDS because of the cost of the additional testing. This is undesirable because a PMDS should provide better compliance assurance than the alternatives of operating parameter limits for electrostatic precipitators (ESPs) and ionizing wet scrubbers (IWSs) and a bag leak detection system for fabric filters, even if the PMDS is only approximately correlated with PM concentrations.<sup>15</sup> In addition, we note that the actual correlation model that best fits the combustor/PMDS may in fact be linear or a concave down polynomial, logarithmic, exponential, or power correlation where PM

<sup>12</sup> See letter from David P. Novello to Stephen L. Johnson regarding "Petition for Reconsideration of Certain Provisions of Hazardous Waste Combustor MACT Replacement Standards Rule," dated December 9, 2005, p. 9, docket item EPA-HQ-OAR-2004-0022-0520.

<sup>13</sup> That is, assurance of compliance with the PM emission standard by continuous monitoring of a surrogate parameter—PMDS detector response in this case—for PM emission concentrations.

<sup>14</sup> See also USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards," September 2005, Appendix C.

<sup>15</sup> See discussion of the limitations of operating parameter limits for ESPs and IWSs and bag leak detection systems for fabric filters (76 FR at 21346-47).

concentrations increase less rapidly than the PMDS response (i.e., such that assuming a linear correlation would be conservative). Alternatively, the actual, best-fit correlation model may be nonlinear and concave up such that a linear correlation assumption would not be conservative. We specifically request comment on the extent that this is problematic and approaches to address the issue.

The rule would require you to extrapolate from the average of the test condition run averages rather than from the highest run of the test condition given that the runs were intended to replicate controllable operating conditions. This would also provide a more conservative extrapolation that is appropriate given that you would assume a linear correlation model, as discussed above.

The rule would allow you to include a zero point correlation value that you establish under procedures in Section 8.6 (5) of Performance Specification-11 for PM CEMS (40 CFR part 60, appendix B). Use of a zero point correlation value is necessary to establish a linear correlation given that only three test runs would be required and is consistent with PM CEMS correlation procedures.

In addition, the rule would allow you to use existing paired PM emissions data and PMDS data that you may have. For example, if you operate a COMS that meets the detection limit requirements of paragraph (c)(9)(i)(A) and have continuous opacity monitoring system (COMS) response data for PM test runs, you may use those data pairs to establish a linear correlation to identify the initial set-point. To help ensure that the data are representative of the current design and operating conditions of the combustor and PMDS, the rule would require that: (1) The data be no more than 60 months old consistent with the data in lieu provisions of § 63.1207(c)(2); and (2) the design and operation of the combustor or PMDS must not have changed in a manner that may adversely affect the correlation of PM concentrations and PMDS response.

Finally, you would extrapolate the alarm set point to the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. Of course, the extrapolated emission concentration must not exceed the PM emission standard. Allowing this level of extrapolation is consistent with PS-11 procedures where the range of a PM CEMS is up to 125% of the highest PM

concentration used to develop the correlation. The range of the CEMS for low emitting sources (i.e., defined by Section 3.16 of PS-11 generally as sources that do not emit PM at concentrations that exceed 50% of the PM standard during the most recent performance test or on a daily average) is the greater of 50% of the PM standard or 125% of the highest PM concentration used to develop the correlation.

### 3. Revised Procedures To Extrapolate the Alarm Set-Point for Operations Under the Notification of Compliance

The final rule allowed you to establish the set-point following the comprehensive performance test as the average of the test run average PMDS response or by extrapolation. See § 63.1206(9)(ii and iii). Under the extrapolation option, you would use PS-11 and Procedure 2 as guidance to identify the most appropriate correlation model based on five correlation tests.

In retrospect, we now conclude (subject to consideration of comment) that it would be difficult to use PS-11 procedures to evaluate correlation models with only five correlation tests (plus a zero point correlation value) to identify the most appropriate model to use for extrapolating the set-point. The statistical criteria (i.e., confidence interval half range percentage, tolerance interval half range percentage, and correlation coefficient) used to evaluate alternative correlation models<sup>16</sup> are directly affected by the number of test runs. With very few test runs, the confidence and tolerance intervals would be relatively high and the correlation coefficient would be relatively low as an artifact of the statistical procedures such that it would be difficult to draw conclusions from the analyses. For example, the rate of decrease of the statistical factors used to calculate the confidence and tolerance intervals slows substantially at 10 degrees of freedom and greater, that corresponds to 12 or more test runs. For 12 test runs, the value of the t-statistic provided in Table 1 of PS-11 for the half range of the 95 percent confidence interval for the mean PM concentration would be 2.228 while for 5 test runs and 15 test runs the t-statistic would be 3.182 and 2.160, respectively. See Table 1 in PS-11.

<sup>16</sup> Alternative correlation models are: linear, polynomial, logarithmic, exponential, and power function. See Section 12.3 of PS-11.

Given that, as just shown, a minimum of 12 test runs<sup>17</sup> over the range of PM concentrations would generally be needed to use the PS-11 procedures to identify the best correlation model, we considered requiring an additional eight test runs during the comprehensive performance test campaign to provide a pool of 12 paired (i.e., PMDS response and PM concentration) data point: Three test runs and a zero point used for the Documentation of Compliance extrapolation; three test runs from the comprehensive performance test to document compliance with the PM standard; and an additional five test runs over a range of operating conditions during the comprehensive performance test campaign. We are concerned, however, that requiring the additional five test runs over the range of operating conditions could be a disincentive to implement a PMDS in lieu of establishing operating parameter limits for ESPs and IWSs and using a bag leak detector system for fabric filters.<sup>18</sup> In addition to the cost of the five additional test runs, you would need to take measures to vary PM concentrations during the testing to provide useful correlation data, that could be problematic (i.e., cost would be incurred for modifications to design or operations) for some sources.

We considered whether it would be reasonable to continue with the approach used for the Documentation of Compliance—to assume a linear regression model given the burden of obtaining enough paired data to identify the most appropriate correlation model. There would now be seven paired data available to define the linear regression: the three test runs and zero point from the Documentation of Compliance combined with the three PM comprehensive performance test runs. We are concerned, however, that the additional comprehensive performance test data may provide little improvement in defining the linear regression because those new data would likely be in the same PM concentration range as the nonzero point test runs used for the Documentation of Compliance—emissions that represent the high end of the range of controllable emissions variability.

<sup>17</sup> This actually means 12 data points which could be comprised of 11 test runs and a zero point correlation value.

<sup>18</sup> Note that, if you nonetheless happen to obtain a minimum of 12 paired data points (e.g., from current or historical testing within 60 months of the compliance date) that provide a range of “as found” and compliance test-level PM concentrations, the rule would require that you use PS-11 procedures to identify the most appropriate correlation model rather than to assume a linear model.

Consequently, we have tentatively concluded that three additional test runs at “as found” (i.e., normal) operating conditions and PM concentrations at some point during the comprehensive performance test campaign<sup>19</sup> should be required to expand the range and number of data pairs to better define the assumed linear regression. This would provide a pool of 10 data pairs: three test runs and a zero point used for the Documentation of Compliance extrapolation; three test runs from the comprehensive performance test to document compliance with the PM standard; and three test runs under “as found” operations.<sup>20</sup>

We are proposing that you would use the linear regression defined by these 10 paired data to extrapolate the alarm set-point to a response value that corresponds to 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. It is reasonable to extrapolate from the highest PM concentration in the correlation rather than the average of the test condition averages (for the comprehensive performance test) as would be required under the Documentation of Compliance because the additional data pairs, and especially the “as-found” data pairs, better define the linear regression and remove some uncertainty in the extrapolation.

We considered whether removing the zero point correlation value may improve the accuracy of the regression given that you would be assuming a linear regression when the relationship between PMDS response and PM concentrations may actually follow another model (e.g., logarithmic). If the regression is in fact nonlinear, using only those data pairs in the high end of the PM concentrations range—in the range of “as-found” PM concentrations to performance test concentrations—may better estimate through linear extrapolation the PMDS response at higher PM concentrations. For situations where the correlation may be nonlinear and concave up, retaining the

zero point in the analysis may result in a lower slope and thus a nonconservative (i.e., too high) extrapolated set-point. We also considered, however, that if the PM concentration range represented by the data pairs was not substantial, deleting the zero point may introduce substantial additional uncertainty in the regression. Therefore, we initially conclude that the zero point should be retained to define the linear correlation. Nonetheless, we specifically request comment on this issue.

#### 4. Revising the Initial Notification of Compliance Set-Point Established by Extrapolation

The extrapolated alarm set-point established in the initial Notification of Compliance would be an interim extrapolated set-point. We are proposing that you must revise the alarm set-point after each Relative Response Audit (RRA).<sup>21</sup>

After the initial RRA, you would have a pool of a minimum of 13 data pairs<sup>22</sup> that should be enough to use PS-11 procedures under Sections 12.3 and 12.4 to identify the most appropriate correlation model rather than continuing to assume a linear correlation. Note that the PMDS would not need to meet the PS-11 performance specifications. The PMDS is used for compliance assurance and is not a PM CEMS that would be used for compliance monitoring. Nonetheless, the statistical criteria for evaluating the correlation for a PM CEMS are also applicable to evaluating the correlation for a PMDS, and the criteria can be compared for alternative correlation models to the PM CEMS specifications in Section 13.2 of PS-11 to identify the most appropriate correlation model.

#### 5. Specific Rather Than Generic References to PS-11 and Procedure 2

The final rule stated that you should use PS-11 as guidance to establish a correlation and Procedure 2 for quality assurance. In retrospect, we believe that those references are overly broad and

could result in a permitting authority inappropriately applying provisions applicable to PM CEMS to a PMDS. Consequently, we propose to provide specific references to PS-11 and Procedure 2 where compliance with particular provisions would be required. Examples are the requirement to use Section 12.3 procedures of PS-11 to characterize alternative correlation models and Sections 12.4 and 13.2 procedures to identify the most appropriate correlation model.

With respect to Procedure 2, there are many quality assurance requirements for PM CEMS that are not appropriate for a PMDS, including absolute correlation audits and response correlation audits. Accordingly, we are proposing to require compliance with specific Procedure 2 requirements rather than making a generic reference to use Procedure 2 as guidance.

The Procedure 2 requirements that would apply to a PMDS are the requirements to perform an RRA. See Section 10.3 (6) of Procedure 2. As stated in the final rule, you must conduct an annual RRA, except that you need only conduct it on a 3-year interval after passing two sequential annual RRA. Today's proposal would expressly require you to comply with the provisions of Section 10.4 (6) that establish the criteria for passing a RRA. Those provisions state that, if you fail the RRA, the PMDS is out of control.

If the PMDS is out of control, today's proposal would also require you to comply with Section 10.5 of Procedure 2 that requires you to take corrective action until your PMDS passes the RRA criteria. If the RRA criteria cannot be achieved, you would not be required to perform a Relative Correlation Audit (RCA) as provided by Section 10.5 (1)(ii), however. That provision is appropriate for a PM CEMS but not a PMDS. If the RRA criteria cannot be achieved, today's rule would require you to re-establish the alarm set-point without using extrapolation as the average of the run averages of PMDS responses for the most recent comprehensive performance test to demonstrate compliance with the PM emission standard. See proposed paragraph (c)(9)(iii)(A).

#### 6. Operations When the PMDS Is Malfunctioning

When reviewing the PMDS requirements in the final rule in response to the reconsideration petition, we determined that the rule was silent on operations when the PMDS is malfunctioning because it is out of control or inoperable, for example. We believe it is reasonable to require that

<sup>19</sup> The “as-found” test runs would be conducted during the general time frame of the comprehensive performance test: before, in between, or after comprehensive performance test runs.

<sup>20</sup> If you operate a COMS that meets the detection limit requirements of paragraph (c)(9)(i)(A) and have a minimum of three data pairs under “as found” operations (or operations that result in a substantial range of PM concentrations) that were obtained within 60 months of the compliance date, you must use those data to better define the linear regression used to extrapolate the set-point for the Documentation of Compliance. You would not be required, however, to conduct additional “as found” testing during the comprehensive performance test campaign.

<sup>21</sup> Note that the rule continues to require you to conduct annual RRAs as prescribed by Procedure 2, except that you need only conduct RRA on a 3-year interval after passing two sequential annual RRA. A RRA is performed by collecting three PMDS and PM concentration pairs for “as-found” source operating conditions and PM concentrations.

<sup>22</sup> The 13 data pairs would be comprised of: three test runs and a zero point used for the Documentation of Compliance extrapolation; six test runs for the initial Notification of Compliance extrapolation comprised of three test runs from the comprehensive performance test to document compliance with the PM standard and three test runs under “as found” operations; and three test runs under “as-found” operations for the initial RRA.

operations when the PMDS is unavailable be considered the same as operations that exceed the alarm set-point given that there would be no information to conclude otherwise. Thus, we are proposing to require you to take corrective measures to correct the malfunction or minimize emissions, and the duration of the malfunction would be added to the time when the PMDS exceeds the alarm set-point. If the time of PMDS malfunction and exceedance of the alarm set-point exceeds 5 percent of the time during any 6-month block time period, you would have to submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and PMDS malfunctions and the revisions to the design, operation, or maintenance of the combustor, air pollution control equipment, or PMDS you are taking to minimize exceedances.

We also determined that the bag leak detection system (BLDS) requirements under § 63.1209(c)(8) did not include provisions to address periods of time when the BLDS is malfunctioning. Accordingly, we are proposing to make similar revisions to the BLDS requirements.

#### D. Tie-Breaking Procedure for New Source Standards

In the notice of proposed rulemaking, we described methodologies used to determine MACT floors for HAP, including the SRE/Feed approach<sup>23</sup> used specifically for those HAP whose emissions can be controlled in part by controlling the amount of HAP in the hazardous waste fed to the source. See 69 FR at 21223–25. In general, the SRE/Feed methodology is applicable to HAP metals and chlorine. The SRE/Feed approach identifies the sources in our data base with the lowest hazardous waste feedrate of the HAP and the sources with the best system removal efficiency for the same HAP. The best performing sources (MACT pool) are those with the best combination of hazardous waste feedrate and system removal efficiency as determined by our ranking procedure. We then use the emission levels from these sources to calculate the emission level achieved by the average of the best performing sources. When determining the MACT floor for new sources, we use the emission level from the single source with the best combination of hazardous

waste feedrate and system removal efficiency.

We also discussed how we determined which sources are included in the MACT pool. First, we ranked each source's hazardous waste feedrate against all the other sources' feedrates on a HAP-by-HAP (e.g., mercury) or HAP group (e.g., low volatile metals) basis. Then we assigned a relative rank of 1 to the source with the lowest feedrate level, a rank of 2 to the source with the second lowest feedrate, and so on. Next, we applied the same ranking procedure to each source's system removal efficiency for the same HAP. The source with the best system removal efficiency is assigned a relative rank of 1, and so on. Then each source's feedrate ranking score and system removal efficiency score were summed to obtain an SRE/Feed aggregated score. Finally, we arrayed the SRE/Feed aggregated scores from lowest to highest and the MACT pool was comprised of the required number of sources with the lowest SRE/Feed aggregated scores. For new sources the MACT pool for a given HAP or HAP group is comprised of the single best performing source, that is, the source with lowest SRE/Feed aggregated score. See 69 FR at 21224.

In the final rule, we used the SRE/Feed methodology for determining MACT floors for HAP metals and total chlorine.<sup>24</sup> The preamble to the final rule also presented a summary of our responses to significant comments regarding the SRE/Feed approach. See 70 FR at 59441–47. We also noted that two analyses for new incinerators identified multiple sources with identical single best SRE/Feed aggregated scores.<sup>25</sup> This resulted in a tie for the single best performing source for the mercury and low volatile metals new source standards for incinerators. See 70 FR at 59447. In these instances, we applied a tie-breaking procedure to identify the single best performing source and we selected the source with the lowest emissions (of the tied sources) as the criterion to break the tie.

The CRWI states that EPA's tie-breaking procedure has not been the subject of direct opportunity for public comment. We agree with petitioner CRWI. Because there were no ties for the single best performing source in the

proposal rule, we did not discuss the concept of selecting the source with the lowest emissions as the criterion to break ties. In addition, the tie-breaking procedure (in the rare instances when a tie occurs) is a key step in setting standards because the selected directly affects the stringency of the emission standard. Therefore, we conclude that there was no opportunity to comment on this tie-breaking procedure and grant CRWI's petition for reconsideration.

The CRWI states in their petition that EPA's decision to break the tie by selecting the source with the lowest emissions results in a MACT floor that is below (more stringent) what the other best performers of the tied sources are achieving.<sup>26</sup> CRWI argues that selecting the source with the lowest emissions is inconsistent with the statutory mandate. Additionally, CRWI argues that relying on emission levels as the tie-breaker between best performing sources is inconsistent with EPA's MACT floor methodology because EPA adopted the SRE/Feed approach while rejecting an emissions-based approach.

The arguments presented in CRWI's petition for reconsideration have not persuaded us that our tie-breaking procedure—selecting the source (of the tied sources) with the lowest emissions as the single best performing source—was erroneous or inappropriate. We believe this approach is a reasonable interpretation of section 112(d)(3), that states the new source standard shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source ("source" being singular, not plural). Moreover, we believe use of the emission level as the tie-breaking criterion is reasonable, not only because it is a measure of control, but because we have already fully accounted for hazardous waste feedrate control and system removal efficiency in the SRE/Feed ranking methodology. To choose either of these factors to break the tie would give that factor disproportionate weight. Nevertheless, given that the tie-breaker issue came up between proposal and promulgation of the final rule and so has not been the subject of direct opportunity for public comment, in

<sup>23</sup> SRE means system removal efficiency and is a measure of the percentage of HAP that is removed prior to being emitted relative to the amount fed to the unit from all inputs (e.g., hazardous waste, fossil fuels, raw materials).

<sup>24</sup> As noted in the preamble, there were a few instances where the SRE/Feed methodology was not used to determine the MACT floor for HAP metals and total chlorine. See, for example, 69 FR at 21224. However, we did use the SRE/Feed approach for the standards addressed by CRWI's petition for reconsideration.

<sup>25</sup> USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix E, Tables "SF-INC-HG" and "SF-INC-LVM."

<sup>26</sup> The two instances in which there was a tie for the single best performing source include mercury and low volatile metals for incinerators. The two sources tied in the mercury analysis had emissions, including variability (the 99th percentile upper prediction limit), of 8.1 and 907 ug/dscm. The low volatile metals MACT floor analysis included a three-way tie. The three sources had emissions of 23, 129, and 198 ug/dscm. See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix E, Tables "SF-INC-HG" and "SF-INC-LVM."

today's notice of reconsideration we are requesting public comment on our decision to select the source (of all tied sources) with the lowest emissions as the single best performing source for purposes of new source floor determinations. In addition, we are seeking comment on alternative tie-breaking criteria suggested by the CRWI such as the single source (of the tied sources) with the best system removal efficiency, the single source (of the tied sources) with the worst system removal efficiency, or some form of averaging (e.g., the 99th percentile upper prediction limit) of the tied sources.

Because we are proposing to retain the same tie-breaker procedure as in the final rule, the new source emission standards promulgated for mercury and low volatile metals under § 63.1219(b)(2) and (b)(4) would not change.

#### *E. Beyond-the-Floor Analyses To Consider Multiple HAP That Are Similarly Controlled*

In developing MACT standards, we also must determine whether further emission reductions are achievable using different or additional control technologies. We may establish standards more stringent than the MACT floor based on the consideration of the cost of achieving the emissions reductions, any non-air health and environmental impacts, and energy requirements. CAA section 112(d)(2). We call these standards beyond-the-floor standards.

In the notice of proposed rulemaking, we evaluated beyond-the-floor standards for each HAP or HAP group (i.e., semivolatile metals comprised of lead and cadmium, low volatile metals comprised of arsenic, beryllium, and chromium). The beyond-the-floor evaluations were discussed in the preamble and presented in the technical support document.<sup>27</sup> As explained in the technical support document, each beyond-the-floor analysis was done separately by HAP. For example, when evaluating the cost of a beyond-the-floor standard for dioxin/furans based on activated carbon injection, we applied the full cost of an activated carbon injection system to the beyond-the-floor. In a separate analysis, the same approach was used when evaluating a beyond-the-floor standard for mercury based on activated carbon injection. We received a public comment that the

beyond-the-floor analyses for similarly controlled HAP by a single type of control device (e.g., activated carbon injection) overestimate the costs for an individual HAP because the control system would reduce multiple HAP.<sup>28</sup> The commenter argued that EPA may have found additional beyond-the-floor results acceptable had the control device costs been apportioned properly among the HAP.

To address this comment in the final rule, we revised the beyond-the-floor analyses to include an additional analysis evaluating multiple HAP that can be controlled by a single control device (i.e., activated carbon injection for dioxin/furans and mercury and improved particulate matter control for the nonvolatile metals and particulate matter).<sup>29</sup> Noting that the first appearance of these new beyond-the-floor analyses was in the final rule, the Sierra Club's petition for reconsideration argues that EPA provided no opportunity to comment on these analyses. We agree with petitioner Sierra Club because we included these additional analyses in the final rule in response to a public comment. Therefore, we are granting the Sierra Club's request for reconsideration of the beyond-the-floor analyses that are based on activated carbon injection and improved particulate matter control. In today's notice, we are providing an opportunity for public comment on these beyond-the-floor analyses.

In addition, after reexamining the beyond-the-floor analyses used in the final rule for similarly controllable HAP by a single control device and also the issues raised in the petition for reconsideration of the Sierra Club, we are proposing to revise the beyond-the-floor methodology. The methodology is presented in the technical support document supporting this rulemaking; however, a brief discussion of the methodology is presented below.<sup>30</sup> The results of the proposed beyond-the-floor analyses are also presented in this support document.

The initial step would be to identify a suite of beyond-the-floor standards for each HAP or HAP group for each source category or subcategory. The six HAP or HAP groups include dioxin/furans, mercury, particulate matter (as a surrogate for the unenumerated metals antimony, cobalt, manganese, nickel,

and selenium), semivolatile metals, low volatile metals, and hydrogen chloride and chlorine (total chlorine). We call this the comprehensive beyond-the-floor analysis. For reasons discussed below, beyond-the-floor evaluations for carbon monoxide and hydrocarbons are done separately. Next we identify an air pollution control strategy capable of achieving the potential beyond-the-floor standards and estimate costs of these controls using, when available, standardized and peer reviewed cost models developed by EPA.<sup>31</sup> In the case of control devices that are capable of reducing emissions of more than one HAP or HAP group, including activated carbon injection (or carbon beds) and improved particulate matter control, we apportioned the total costs of the control device to those HAP that would be controlled by the technology. HAP emission reductions and non-air quality health and environmental impacts and energy requirements were then estimated.

We next determined whether the comprehensive beyond-the-floor analysis was achievable by applying the statutory factors of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements for each HAP or HAP group. The cost metric we would use to consider the cost of achieving emissions reductions is cost-effectiveness—dollars per unit mass reduction (e.g., \$ per ton removed), a reasonable means of assessing cost of control technologies and strategies. See, e.g. *Husqvarna AB v. EPA*, 254 F. 3d 195, 200 (D.C. Cir. 2001). After considering these statutory factors, we evaluated each of the six HAP or HAP groups of the comprehensive analysis to identify those beyond-the-floor standards where further emission reductions appear achievable. If emission reductions appear achievable for all six HAP or HAP groups, then we would propose beyond-the-floor standards for these HAP. For co-controlled HAP, however, if some results appeared achievable while others did not, we conducted a subsequent analysis whereby the costs associated with the unachievable HAP are reapportioned to those co-controlled HAP appearing achievable. We believe this reapportioning step is necessary to prevent costs of control of a co-controlled HAP from being diluted by costs from unachievable (too costly) reductions of another co-controlled HAP. Without the reapportionment of

<sup>28</sup> See comments of Sierra Club, docket item EPA-HQ-OAR-2004-0022-0292, page 30.

<sup>29</sup> USEPA, "Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume I: MACT Issues," September 2005, pages 152-153.

<sup>30</sup> USEPA, "Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations," July 2006.

<sup>27</sup> See HAP-specific discussions in preamble (69 FR at 21240-21297). See also USEPA, "Draft Technical Support Document for HWC MACT Standards, Volume V: Emissions Estimates and Engineering Costs," March 2004, Section 4.6, Appendices F and G.

<sup>31</sup> USEPA, "EPA Air Pollution Control Cost Manual," available at <http://www.epa.gov/ttn/catc/products.html>.

costs, these costs would be assigned to a rejected beyond-the-floor standard.<sup>32</sup> We then evaluated the beyond-the-floor results after reapportioning costs to the remaining co-controlled HAP to determine whether the further emissions reductions are achievable. This iterative process continues until we determine all standards appear achievable or no beyond-the-floor standards appear achievable. This iterative process for co-controlled HAP continues until all remaining co-controlled HAP are judged achievable or no beyond-the-floor standards appear achievable for co-controlled HAP.

Applying this proposed methodology would yield the same results as the methodology used in the final rule. These are beyond-the-floor standards of 68 mg/dscm<sup>33</sup> (0.030 gr/dscf) for existing sources and 34 mg/dscm (0.015 gr/dscf) for new sources, and beyond-the-floor standards for liquid fuel boilers for the dry air pollution control device subcategory of 0.40 ng TEQ/dscm for existing and new sources. Since the standards would not change, we are not repropounding them. We are, however, soliciting comment on the revised methodology for assessing achievability of standards for co-controlled HAP.

As mentioned above, carbon monoxide and hydrocarbons<sup>34</sup> are not included in the comprehensive beyond-the-floor analysis. While a beyond-the-floor technology such as activated carbon injection may provide additional control of certain organic hazardous air pollutants (HAP), we believe it is inappropriate to evaluate (under this comprehensive option) numerical beyond-the-floor standards for carbon monoxide and hydrocarbons. When complying with the current standards for carbon monoxide and hydrocarbons, sources can elect to comply with either standard (e.g., 70 FR at 59410–59411). With respect to the carbon monoxide standard, the use of activated carbon injection (or any other beyond-the-floor techniques evaluated in the comprehensive analysis) would not reduce or affect emissions of carbon monoxide. Thus, there is no way to

identify a numerical emissions limit for carbon monoxide that would reflect potential reductions in organic HAP emissions because there is no direct correlation between carbon monoxide and emissions of organic HAP. Given that we cannot identify a numerical beyond-the-floor standard for carbon monoxide and given that the majority of sources elect to comply with the carbon monoxide standard rather than the hydrocarbon standard, we believe it is not appropriate to include carbon monoxide in the comprehensive beyond-the-floor analysis.

We also have concerns about identifying a beyond-the-floor standard for hydrocarbons under this comprehensive option. As we document in the technical support document, a significant percentage of total stack organics (that would be measured by a hydrocarbon monitor) are not organic HAP (e.g., short-chain aliphatic compounds like methane, propane, and acetylene).<sup>35</sup> We estimate that the organic HAP emissions comprise approximately 20% of total hydrocarbon emissions. Furthermore, activated carbon injection is estimated to capture only a small fraction—13%—of the organic HAP emissions. Thus, we estimate that the use of activated carbon injection would reduce organic HAP emissions by less than 3% on average. This estimate would allow us to identify a potential numerical beyond-the-floor standard for hydrocarbons that would reflect reductions achieved by activated carbon injection.<sup>36</sup> However, we believe it would be inappropriate to identify a beyond-the-floor standard as part of the comprehensive analysis because there is much uncertainty in the 3% estimate.<sup>37</sup> Furthermore, there are numerous factors that affect combustion efficiency, and, subsequently, hydrocarbon emissions. Thus, a source may not be able to replicate its hydrocarbon emissions levels (and other sources may not be able to duplicate those emission levels) if the quantity of organic HAP that are amenable to capture with activate carbon injection decreases as a result of one of the many factors that affect combustion efficiency. Finally, given that very few sources elect to comply with the hydrocarbon standard rather than the carbon monoxide standard (a

standard for which we cannot identify a numerical beyond-the-floor level based on activated carbon injection), we believe that it is more appropriate to present estimated reductions of organic HAP emissions that would result from an activated carbon injection beyond-the-floor option in lieu of identifying explicit beyond-the-floor standards for carbon monoxide and hydrocarbons.

In its petition for reconsideration, the Sierra Club also opposes inclusion of costs associated with the disposal of spent carbon as a solid and/or hazardous waste when carbon injection is used as a beyond-the-floor control technology.<sup>38</sup> We disagree because disposal costs are one of the many direct costs associated with operating a carbon injection system (as well as an example of a non-air quality health and environmental impact). As mentioned above, our cost estimates are based on standardized and peer reviewed cost models developed by EPA. Indeed, the “EPA Air Pollution Control Cost Manual” includes specific cost inputs for disposal costs not only for the disposal of solid waste from carbon adsorber systems, but also wastewater disposal costs for wet scrubbers for acid gas control, dust disposal cost for baghouses and electrostatic precipitators for particulate matter control, and waste liquid collection and disposal costs for wet scrubbers for particulate matter control.<sup>39</sup> Therefore, the cost estimates presented in the technical support document include disposal costs for certain beyond-the-floor controls.<sup>40</sup>

In summary, we are accepting public comment on the revised beyond-the-floor analyses and the conclusions.

#### *F. Dioxin/Furan Standard for Incinerators With Dry Air Pollution Control Devices*

We proposed to subcategorize incinerators between wet or no air pollution control devices and incinerators equipped with dry air pollution control devices or waste heat

<sup>32</sup> Even though costs would be reapportioned under this proposed approach, we note that emissions reductions from a rejected beyond-the-floor standard of a co-controlled HAP would remain a collateral benefit of other accepted co-controlled HAP.

<sup>33</sup> Note that we are proposing to revise this standard from 68 mg/dscm to 69 mg/dscm in today's notice. See Section V. J below.

<sup>34</sup> Carbon monoxide and hydrocarbons are widely accepted indicators of combustion conditions and are used (along with the destruction and removal efficiency standard) as surrogates to control emissions of nondioxin/furan organic hazardous air pollutants.

<sup>35</sup> USEPA, “Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations,” July 2006, Section 4.

<sup>36</sup> For example, the beyond-the-floor standard for a hydrocarbon MACT floor of 10 ppmv would be 9.7 ppmv.

<sup>37</sup> USEPA, “Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations,” July 2006, Section 4.1.1

<sup>38</sup> See petition for reconsideration of the Sierra Club, docket item EPA–HQ–OAR–2004–0022–0517, page 26.

<sup>39</sup> USEPA, “EPA Air Pollution Control Cost Manual,” EPA/452/B–02–001, January 2002, sections 3.1, 5.2, and 6.

<sup>40</sup> Nonetheless, we also conducted the comprehensive analysis for new sources to investigate the extent that disposal costs of spent activated carbon injection would impact the achievability of potential beyond-the-floor standards. As presented in the technical support document, when disposal costs are (inappropriately) eliminated (reduced to zero), there would be no changes to the conclusions proposed regarding those standards that appear achievable. See “Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations,” July 2006, Section 5.2.

boilers.<sup>41</sup> See 69 FR at 21214 (This is not subcategorizing on the basis of an emission control technology, but rather on the basis of a basic difference in process). Accordingly, we proposed separate emission standards for each subcategory for incinerators for dioxin/furans.<sup>42</sup> 69 FR at 21240–42. The standard proposed for existing incinerators with dry air pollution control devices or waste heat boilers (the standard at issue in this discussion) was 0.28 ng TEQ/dscm.<sup>43</sup> 69 FR at 21240. As discussed in the proposal, this standard was based on an evaluation of compliance test emissions data of the MACT pool sources comprising this subcategory of incinerators. As noted in the petition of the Sierra Club, one of the five MACT pool sources was the Clean Harbors Aragonite incinerator located in Utah.<sup>44</sup> The consideration of these data in the MACT floor analysis is the specific point in contention in the Sierra Club's petition for reconsideration.

In the final rule, we adopted this same subcategorization scheme and promulgated separate dioxin/furan emissions standards for each subcategory of incinerators. See 70 FR at 59420, 59467. Our revised MACT floor analysis yielded a calculated floor level of 0.42 ng TEQ/dscm, that reflected emissions variability. We then evaluated whether this calculated floor level was less stringent than the interim dioxin/furan standard under § 63.1203(a)(1). Because we concluded the calculated floor level of 0.42 ng TEQ/dscm was less stringent than the interim dioxin/furan standard, we promulgated the interim

dioxin/furan standard as the standard.<sup>45</sup> Thus, the emission standard promulgated for existing incinerators with dry air pollution control devices or waste heat boilers was either 0.20 ng TEQ/dscm or 0.40 ng TEQ/dscm provided that the combustion gas temperature at the inlet to the initial particulate matter control device is 400 °F or lower (§ 63.1219(a)(1)). The analyses supporting these standards are included in the technical support document.<sup>46</sup>

As discussed in the final rule, the calculated MACT floor increased from 0.28 ng TEQ/dscm to 0.42 ng TEQ/dscm because we were alerted in comments to the proposed rule that our MACT pool analysis considered dioxin/furan data that should not have been included. Commenters stated that the Clean Harbors Aragonite incinerator (source 327C10 in the data base) encountered problems with its carbon injection system during the emissions test from which the data were obtained and subsequently used in the MACT floor analysis for this incinerator subcategory.<sup>47</sup> We investigated the commenters' claims after proposal and confirmed the problems that were encountered during testing. See 70 FR at 59419, 59432. Importantly, we determined that these dioxin/furan emissions data were not used to establish operating parameter limits for the carbon injection system based on this test.<sup>48</sup> Therefore, we no longer designate this test condition as "compliance test" data, that is the type of data upon which this MACT standard is based. After concluding that these emissions data are not appropriate for inclusion in the MACT floor analysis, we instead substituted in its place other readily available compliance test emissions data in our data base for that facility. While the substituted emissions data are indeed older than the problematic data, these data are the most recent valid compliance data available to us for this source. As a result of this data handling decision, the

calculated MACT floor increased as discussed earlier.

The Sierra Club notes in its petition that the promulgated MACT standard for this subcategory of incinerators increased from that proposed as a result of EPA's decision to use different dioxin/furan emissions data from the Clean Harbors Aragonite incinerator. The Sierra Club states that EPA had provided no opportunity to comment on this data handling decision because it was not reflected in the proposed rule. We agree with petitioner Sierra Club that it was impracticable for them to raise its concern about the use of the Clean Harbors Aragonite emissions data. Therefore, we are granting the Sierra Club's petition for reconsideration for this issue.

The Sierra Club contends that EPA's data substitution for the Clean Harbors Aragonite incinerator is arbitrary and capricious because EPA rejected the newer test data to use older and worse test data. The Sierra Club states that a source encountering problems with its air pollution control equipment does not justify using other data from an earlier test with higher emissions because EPA had no reason to conclude that the incinerator would perform worse than the level it achieved while encountering problems.

The arguments presented in the petition for reconsideration have not persuaded us, subject to consideration of further comment, that our MACT floor determination in the final rule was inappropriate. We believe we correctly identified the MACT floor for this incinerator subcategory based on the available emissions data. The Clean Harbors Aragonite data from 2001 cannot be used in the MACT floor analysis because these data simply are not representative of performance due to problems encountered. We note that the substituted Clean Harbors Aragonite data considered in the final rule MACT floor analysis were not included in the pool of the five best performing sources for the dioxin/furan standard. If we had simply excluded the problematic data (and not substituted the older data), then we would have promulgated the identical emission standard because the substituted data for Clean Harbors Aragonite had no direct impact on the floor analysis (i.e., the data were not included in the MACT pool). Nevertheless, because we changed the floor determination between proposal and promulgation in response to comments received on the proposal, and because we also made certain data editing decisions (again in response to public comment) that resulted in a different data base being used for the

<sup>41</sup> In its petition for reconsideration, the Sierra Club also petitioned EPA to reconsider the decision to subcategorize the hazardous waste incinerator source category. As discussed in Section III above, we have denied their request for reconsideration. Therefore, we are neither soliciting comments nor will we consider any comments received on the decision to subcategorize the incinerator category.

<sup>42</sup> Sierra Club also petitioned EPA to reconsider the dioxin/furan standard for the subcategory of incinerators with wet or no air pollution control devices. This standard is not discussed in today's proposed rule because EPA has denied the reconsideration request as discussed in Section III above. Therefore, we are neither requesting comments nor will we consider any comments received on the dioxin/furan standard for incinerators with wet or no air pollution control devices.

<sup>43</sup> See USEPA, "Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," March 2004, Appendix C, Table "E-INC/D+WHB-DF." Note that because the issue raised in the Sierra Club's petition does not affect the dioxin/furan standard for new incinerators, the scope of this discussion will be limited to existing incinerators.

<sup>44</sup> EPA's data base contains emissions data from Clean Harbors Aragonite for six different test conditions. The proposed dioxin/furan standard was based, in part, on the trial burn data from Clean Harbors Aragonite that was conducted in June 2001.

<sup>45</sup> Replacement standards can be no less stringent than existing standards, including the interim standards under §§ 63.1203–1205. See 70 FR at 59457–58.

<sup>46</sup> See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix E, Table "E-INC/D+WHB-DF."

<sup>47</sup> See USEPA, "Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume I, MACT Issues," September 2005, Section 1.3.2, and "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 10.1.1.

<sup>48</sup> See docket item EPA-HQ-OAR-2004-0022-0401.

floor determination than we used at proposal, we are requesting public comments on the MACT floor analysis that supported the final rule. Specifically, we are soliciting comment on the final rule MACT floor analysis that included our decision to replace the 2001 Clean Harbors Aragonite data with other dioxin/furan emissions data in our data base.

Because we are proposing to retain the final rule MACT floor analysis for the subcategory of incinerators equipped with dry air pollution control devices or waste heat boilers, the emission standards promulgated for dioxin/furans under § 63.1219(a)(1)(i) and (b)(1)(i) would not change (subject to consideration of public comment).

### *G. Provisions of the Health-Based Compliance Alternative*

The final rule allows you to establish and comply with health-based compliance alternatives for total chlorine for hazardous waste combustors other than hydrochloric acid production furnaces in lieu of the MACT technology-based emission standards established under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. See 70 FR at 59413–19 and § 63.1215.

Sierra Club petitioned for reconsideration stating that EPA changed several provisions of the health-based compliance alternative after the period for public comment and therefore did not provide notice and opportunity for public comment.<sup>49</sup> In addition, Sierra Club states that three new provisions are problematic: (1) It is unlawful to allow sources to comply with the health-based compliance alternative without prior approval from the permitting authority; (2) it is unlawful to allow a source to obtain an unlimited extension of the compliance date if their eligibility demonstration is disapproved and the source is unable to change the design or operation of the source to comply with the MACT emission standards by the compliance date; and (3) the Agency cannot rely on the Title V program as the vehicle for establishing health-based compliance alternatives.

We are granting reconsideration of these provisions because we developed them in response to comments on the proposed rule, after the period for public comment as Sierra Club states. Furthermore, to address Sierra Club's concerns, we are proposing to revise the rule pertaining to these provisions as follows: (1) The rule would state that

the operating requirements specified in the eligibility demonstration are “applicable requirements” as defined in 40 CFR 70.2 or 71.2 and therefore must be incorporated in the Title V permit; (2) a source may comply with the health-based compliance alternative without prior approval from the permitting authority provided that the source has made a good faith effort to provide complete and accurate information and to respond to any requests for additional information; and (3) the compliance date extension cannot exceed one year if the eligibility demonstration is disapproved and the source is unable to change the design or operation to comply with the MACT emission standards by the compliance date. These provisions are discussed below.

Note that we are accepting further comment on these provisions in general in addition to requesting comment on the proposed revisions to the provisions. We believe the provisions in general are warranted for the reasons provided in the final rule and restate these reasons below. Nonetheless, we are open to comment and will determine whether changes are warranted other than those we are proposing.

#### 1. Complying With the Health-Based Compliance Alternative Without Prior Approval From the Permitting Authority Would Be Conditional

The final rule does not require prior approval of the eligibility demonstration for existing sources. If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits and associated chlorine feedrate limits you present in your eligibility demonstration. See 70 FR at 59484 and § 63.1215(e)(2)(i)(C).

We are today providing an opportunity to comment on this provision in general and on a proposal to revise the rule to clarify that a time extension is conditioned on your making a good faith effort to submit complete and accurate information and to respond in a timely manner to any requests for additional information.

Many commenters on the proposed rule stated that requiring prior approval of the eligibility demonstration would be unworkable. Commenters were concerned that the permitting authority may not approve the demonstration prior to the compliance date, even though the source has submitted

complete and accurate information and has responded to any requests for additional information in good faith. A commenter suggested that, if the permitting authority has neither approved nor disapproved the eligibility demonstration by the compliance date, the source may begin complying on the compliance date with the alternative health-based limits specified in the eligibility demonstration.

We agreed with commenters that requiring prior approval of the eligibility demonstration may be unworkable for the reason commenters suggested. Accordingly, the final rule does not require prior approval of the eligibility demonstration for existing sources. If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits and associated chlorine feedrate limits you present in your eligibility demonstration.

When reviewing this provision in response to Sierra Club's petition for reconsideration, we noticed that the regulatory language at § 63.1215(e)(2)(i)(C) simply stated that you could begin complying on the compliance date with the health-based alternative compliance requirements absent approval from the permitting authority if the permitting authority had not issued a notice of approval or intent to disapprove your eligibility demonstration by the compliance date. We inadvertently did not make the provision conditional on your making a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner. Accordingly, we propose today to revise that regulatory provision to say:

- If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration provided that you have made a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner.

If the permitting authority believes that you have not made a good faith effort to provide complete and accurate information or to respond to any requests for additional information, the authority may notify you in writing by the compliance date that you have not

<sup>49</sup> See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section XII, docket item EPA-HQ-OAR-2004-0022-0517.



met the conditions for complying with the health-based compliance alternative without prior approval.

## 2. An Extension of the Compliance Date Granted Upon Disapproval of an Eligibility Demonstration Cannot Exceed One Year

The final rule states that the permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or comply with the total chlorine MACT standards. The permitting authority may extend the compliance date of the total chlorine MACT standards to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the total chlorine MACT standards. See 70 FR at 59484 and § 63.1215(e)(2)(i)(B) and (D).

We are today providing an opportunity for comment on this provision in general and on a proposal to revise the rule to limit the time extension to (up to) one year. We are tentatively persuaded by Sierra Club's argument that this limitation is needed to be consistent with CAA section 112(i)(3)(B) (and the General Provisions under Subpart A—§ 63.6(i)(4)(i)(A)).

Commenters on the proposed rule were concerned that the permitting authority may disapprove the eligibility demonstration for the health-based compliance alternative too late for the source to make changes to the design or operation of the combustor or related systems to enable the source to comply with the total chlorine MACT standard. See 70 FR at 59484. We agreed with that concern and therefore allowed the permitting authority to extend the compliance date. We inadvertently did not limit the extension of the compliance date to one year, however, consistent with the General Provisions and CAA section 112(i)(3)(B).

## 3. The Health-Based Compliance Alternative Requirements Are Applicable Requirements

We stated in the preamble to the final rule in response to comments that, because the health-based compliance alternative requirements are clearly

defined (e.g., HCl-equivalent emission limits, chlorine feedrate limits), and because any standards or requirements created under CAA section 112 are considered applicable requirements under 40 CFR part 70, the compliance alternatives would be incorporated into Title V permits. See 70 FR at 59481.

Nonetheless, petitioner Sierra Club states that the Agency cannot rely on the Title V program as the vehicle for establishing health-based compliance alternatives.

We are today providing an opportunity for comment on this provision in general and on a proposal to revise the rule to add clarifying regulatory language stating that § 63.1215 requirements are applicable requirements under part 70 and therefore must be included in the Title V permit as would any other applicable requirement. We note that the final rule specifies that operating requirements in the Notification of Compliance are applicable requirements for purposes of parts 70 and 71 of this chapter, and that the operating requirements specified in the Notification of Compliance will be incorporated in the Title V permit. See § 63.1206(c)(1)(iv)–(v). The health-based compliance alternative is implemented using an eligibility demonstration that is independent from the Notification of Compliance. See § 63.1215(c) and (e). Accordingly, we propose today to add new § 63.1215(e)(3) to clarify that the health-based compliance alternative requirements established in an approved eligibility demonstration are applicable requirements and must be included in the Title V permit.

## V. Other Proposed Amendments

### A. Sunset Provision for the Interim Standards

In the preamble to the final rule (70 FR at 59503) we indicated in response to a comment that we were including a sunset provision for the interim standards in the final rule. However, that provision was inadvertently omitted from the rule. In today's rule we propose to incorporate sunset provisions into §§ 63.1203, 63.1204, and 63.1205. As indicated in the referenced preamble, the Interim Standards will be superseded by the final replacement standards on the compliance date for the replacement standards. See proposed additions to §§ 63.1203(e), 63.1204(i), and 63.1205(e).

### B. Operating Parameter Limits for Sources With Fabric Filters

In the final rule, we promulgated a new paragraph § 63.1206(c)(8) that sets forth operating parameter limits for

sources equipped with a baghouse (fabric filter) (70 FR at 59486). If you use a baghouse to comply with one or more emission standard(s), you are either required to use a bag leak detection system that meets the specifications of § 63.1206(c)(8)(ii), or meet the particulate matter detection system requirements specified in § 63.1206(c)(9). However, the current language of § 63.1206(c)(9) appears to restrict the particulate matter detection system requirement to electrostatic precipitators and ionizing wet scrubbers. This was never our intent. Consequently, in today's notice we are proposing to amend § 63.1206(c)(9) to include baghouses.

### C. Confirmatory Performance Testing Not Required for Sources That Are Not Subject to a Numerical Dioxin/Furan Emission Standard

Section 63.1207(b)(3) of the final rule requires a one-time only test for dioxin/furan emissions for those sources that are not required to meet a numerical dioxin/furan emission standard. You are only required to repeat this test if you change the design or operation of the source in a manner that may increase dioxin/furan emissions. Because dioxin/furan testing is the only component of the confirmatory performance test (see § 63.1207(b)(2)), it logically follows that confirmatory performance testing is not required for these sources. Nevertheless, the final rule did not include an explicit exemption from the confirmatory performance test requirement. In today's notice, we are proposing to add a new paragraph (vi) to § 63.1207(b)(3) to clarify this point.

### D. Periodic Performance Tests for Phase I Sources

Section 63.1207(d)(1) requires periodic comprehensive performance testing to begin no later than 61 months after commencing the previous comprehensive performance test. Section 63.1207(d)(2) requires confirmatory performance testing to begin no later than 31 months after commencing the previous performance test. However, in the Interim Standards Rule, promulgated on February 13, 2002, we added § 63.1207(d)(4) that waived these periodic test requirements under the interim standards (67 FR at 6815).

Section 63.1207(d)(4) also includes language reinstating the periodic test requirements upon promulgation of the final replacement standards (i.e., October 12, 2005). Our intent was to reinstate periodic testing only for sources operating under the October 12, 2005 replacement standards, not the

interim standards. However, the current language could also be misinterpreted to require periodic testing by sources that remain under the interim standards. In today's rule, we propose to amend § 63.1207(d) to clarify that periodic comprehensive performance testing and confirmatory performance testing are only required for sources operating under the final replacement standards. For the reasons discussed in the preamble to the interim standards rule (67 FR at 6802), periodic testing is not required for sources that remain operating under the interim standards.

#### *E. Performance Test Waiver for Sources Subject to Hazardous Waste Thermal Concentration Limits*

In the 1999 final rule (64 FR at 52828), we waived the performance test requirement for mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas for sources that demonstrated that the maximum theoretical emission concentration (MTEC) did not exceed the emission standard for that HAP. See § 63.1207(m). In essence, this provision waives the performance test if the constituent feed rate (after conversion to an exhaust gas concentration using continuously monitored exhaust gas flow data) is less than the applicable emission rate, assuming that 100% of the constituent in the feed is emitted from the combustion unit.

In the 2005 final rule (70 FR at 59402), for certain source categories (*i.e.*, liquid fuel boilers, cement kilns, and lightweight aggregate kilns), we limited the feedrate of these same constituents in proportion to the heat input from hazardous waste. See, for example, § 63.1217(a)(2)(ii). We refer to these as hazardous waste thermal concentration emission limits.<sup>50</sup> In today's notice, we propose to amend § 63.1207(m) to waive performance tests for any constituent whose thermal concentration in the waste feed is at or below the applicable thermal concentration emission limit. This is analogous to the performance test waiver for sources that comply with MTEC standards. Although performance tests would not be required, the thermal concentration emission limits would remain in effect during source operations.

<sup>50</sup> Note that we are granting reconsideration of the decision to subcategorize the liquid fuel boiler source category by heating value, which includes standards based on this potential normalizing parameter. See Section IV.A above.

#### *F. Averaging Method When Calculating 12-Hour Rolling Average Thermal Concentration Limits*

The replacement standards for cement kilns and lightweight aggregate kilns limit the emissions of semivolatile metals (cadmium and lead) and low volatile metals (arsenic, beryllium, and chromium) from hazardous waste feeds relative to the heating value of those feeds. In order to monitor compliance with those requirements, § 63.1209(n)(2)(iii) requires the source to establish a 12-hour rolling average feedrate limit for those metals on a thermal concentration (*e.g.*, pounds per million British thermal unit) basis. The limits are derived from operating levels during the comprehensive performance test.

For reasons discussed in the 1999 final rule (64 FR at 52922), EPA has consistently required sources to calculate most of their operating parameter limits as the average of each relevant test run average recorded during the comprehensive performance test. Section 63.1209(n)(2)(iii) describes how to calculate the average thermal concentration of metals for each test run, but it does not explicitly describe how to calculate the thermal concentration limit. In today's notice, we are proposing to amend § 63.1209(n)(2)(iii) to indicate that the metal thermal concentration limit is the average of the individual test run averages.

#### *G. Calculating Rolling Averages for Averaging Periods in Excess of 12 Hours*

The final rule allows operators of liquid fuel boilers to average certain feed rate limits over a period of up to one year. This applies to the mercury and semivolatile feed rate limits. §§ 63.1209(n)(2)(v)(A)(iv) and (n)(3)(v) as well as §§ 63.1209(l)(1)(ii)(B)(5) and (l)(1)(C)(5) all describe the same method for calculating averages of longer than 12 hours upon initial compliance with the rule. They require that you calculate the average of all 1-minute average values until you have acquired data for the full averaging period (*i.e.*, up to one year). Thereafter, you are required to update this value each hour using the 60-minute average feedrate from the previous hour.

EPA recognizes that these approaches may needlessly complicate data management and could require increased data storage. Therefore, we are proposing to amend these sections of the regulation in two ways. The first change will explicitly allow you to calculate long-term rolling averages using only the 1-minute data that you

are otherwise required to record. If you choose this approach, you would calculate long-term averages in exactly the same manner as all other rolling averages, with the value being updated every minute. There would be no requirement to switch to a different system after completion of the initial averaging period. Alternatively, you may still choose to use the hourly update option specified in the current regulations. If you choose this latter option, however, we are proposing to allow you to begin using hourly updates after completing at least 12 hours of monitoring using 1-minute updates. (The current regulation only allows hourly updates after completing the first long-term averaging period, that could be up to one year.) We believe that this will allow you to begin "normal" monitoring operations as soon as possible without any significant effect on accuracy.

We wish to emphasize that the definition of continuous monitor requires that you maintain all one-minute average values in your operating record regardless of whether you elect one-minute or hourly updates to the rolling average. Pursuant to § 63.10(b)(1) of the MACT General Provisions, these data must be retained for a period of at least five years.

#### *H. Calculating Rolling Averages*

Most of the feed rate, emission rate, and operating parameter limits established in the HWC MACT rule are monitored on a rolling average basis that varies from hourly to annually. Continuously monitored parameters must be recorded at least once each minute. The rolling average is then calculated as the average of the one-minute values for the duration of the most recent averaging period. For example, a one-hour rolling average temperature value would be calculated by averaging the 60 most recent one-minute temperature readings, with a new hourly rolling average value being generated every minute.

In the 1999 final rule, the longest permissible rolling average period was 12 hours. However, in the 2005 final rule, we allowed up to annual averaging for those emission standards that are based on "normal" feed data. (See the liquid fuel boiler standards for mercury and semivolatile metals under § 63.1217.) In recognition of the fact that these long-term averages would not vary significantly over short time periods, we chose to allow you to update these rolling averages hourly, rather than every minute. Our intent was to retain one-minute updates for averaging periods up to 12 hours while allowing

hourly updates for longer averaging periods. However, we inadvertently specified hourly updates for several parameters that are not subject to long-term (i.e., greater than 12-hour) averaging. This occurred for three parameters: the chromium feedrate in liquid fuel boilers burning hazardous waste with a heating value of 10,000 Btu per pound or greater under § 63.1209(n)(2)(v)(B)(1)(i), the chromium feedrate in liquid fuel boilers burning hazardous waste with a heating value of less than 10,000 Btu per pound under § 63.1209(n)(2)(v)(B)(2), and the chlorine thermal concentration feedrate limit for liquid fuel boilers burning hazardous waste with a heating value of not less than 10,000 Btu per pound under § 63.1209(o)(1)(ii)(A)(3). In today's notice, we are proposing to delete the hourly update references for these three parameters.

*I. Timing of the Periodic Review of Eligibility for the Health-Based Compliance Alternatives for Total Chlorine*

If you choose to comply with the health-based compliance alternatives for total chlorine, § 63.1215(h)(2)(i) requires

you to review your eligibility under that alternative at least every five years. The results must be submitted to the regulatory authority for review and approval. However, there is some ambiguity in the exact timing of that submission in the current regulatory language.

In this action, we propose to eliminate the ambiguity by amending § 63.1215(h)(2)(i) to indicate that the results of your 5-year review are due to the permitting authority at the time you submit your comprehensive performance test plan (as specified in the current rule). This will most likely be approximately four years (not five, as indicated in the current rule) after your last comprehensive performance test.

*J. Expressing Particulate Matter Standards Using the International System of Units (SI)*

In the final rule, we expressed the particulate matter standards for incinerators, cement kilns, and lightweight aggregate kilns using English units (gr/dscf) while expressing the particulate matter standards for liquid and solid fuel boilers using SI units (mg/dscm). Our preference is to

express all particulate matter standards in SI units and we are proposing to revise the particulate matter standards in §§ 63.1216 through 63.1221 by expressing the standards in SI units.<sup>51</sup> When making the conversion from English units to SI units, we are proposing to convert the calculated particulate matter results prior to the step in which the results were rounded to two significant figures. For example, the calculated MACT floor for existing incinerators was 0.0133 gr/dscf, that was rounded to 0.013 gr/dscf (the latter being the promulgated standard).<sup>52</sup> Thus, our proposed approach would convert 0.0133 gr/dscf to SI units. We believe this approach for converting English to SI units more accurately reflects the MACT standards identified in the final rule because making the conversion to SI units after rounding the results (in English units) can introduce imprecision. In addition, we also would recalculate and revise as necessary the liquid and solid fuel boiler standards using the same approach (i.e., existing solid fuel boilers and existing liquid fuel boilers). The table below shows the results of the conversion to SI units.

PROPOSED PARTICULATE MATTER STANDARDS EXPRESSED IN SI UNITS

| Source category                               | Type of source     | Promulgated standard            | Proposed standard in SI units |
|---|--------------------|---------------------------------|-------------------------------|
| Solid Fuel Boilers (§ 63.1216) .....          | Existing New ..... | 68 mg/dscm<br>34 mg/dscm        | 69 mg/dscm<br>34 mg/dscm      |
| Liquid Fuel Boilers (§ 63.1217) .....         | Existing New ..... | 80 mg/dscm<br>20 mg/dscm        | 79 mg/dscm<br>20 mg/dscm      |
| Incinerators (§ 63.1219) .....                | Existing New ..... | 0.013 gr/dscf<br>0.0015 gr/dscf | 30 mg/dscm<br>3.5 mg/dscm     |
| Cement Kilns (§ 63.1220) .....                | Existing New ..... | 0.028 gr/dscf<br>0.0023 gr/dscf | 65 mg/dscm<br>5.3 mg/dscm     |
| Lightweight Aggregate Kilns (§ 63.1221) ..... | Existing New ..... | 0.025 gr/dscf<br>0.0098 gr/dscf | 57 mg/dscm<br>22 mg/dscm      |

We acknowledge that several of the particulate matter standards shown in the table above may be revised as a result of the reconsideration of the particulate matter standard for new cement kilns (71 FR at 14665). If any particulate matter standards are revised, we would apply the same procedure to convert the new standards to SI units.

Accordingly, we propose to revise the following particulate matter standards: §§ 63.1216(a)(7); 63.1217(a)(7); 63.1219(a)(7) and (b)(7); 63.1220(a)(7)(i) and (b)(7)(i); and 63.1221(a)(7) and (b)(7).

*K. Mercury Standards for Cement Kilns*

In the final rule, we intended to establish a two-pronged approach for controlling mercury emissions from cement kilns. See preamble discussion at 70 FR at 59468. Step one establishes a maximum concentration of mercury in the hazardous waste feed. Step two allows the source to choose between either a traditional approach of limiting the total mercury feed rate and relevant operating parameters, or a maximum theoretical emission concentration (MTEC) approach. The MTEC is calculated as described in

§ 63.1207(m)(2) except that, in this case, it is calculated for the hazardous waste feed(s) only.

Although we believe that the preamble description of this approach is clear, the regulatory language, promulgated in §§ 63.1220(a)(2) and (b)(2), is not.<sup>53</sup> Our intent was to require all affected cement kilns to comply with § 63.1220(a)(2)(i). In addition, the source has the option of complying with either § 63.1220(a)(2)(ii) or (a)(2)(iii). However, the current language could be misinterpreted to allow the source to comply only with § 63.1220(a)(2)(iii).

<sup>51</sup> We are not proposing to revise the particulate matter standards in §§ 63.1203 thru 63.1205 because affected sources are already complying with these standards.

<sup>52</sup> See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix F, Table "APCD-INC-PM."

<sup>53</sup> For brevity, the remaining regulatory citations refer only to the standards for existing cement kilns. However, the same changes are proposed for both existing and new kilns.

Today, we are proposing to amend § 63.1220(a)(2) to more clearly reflect our original intent. Conforming changes to the mercury monitoring requirements of § 63.1209(l)(1)(iii) and (iv) are also proposed.

#### *L. Facilities Operating Under RCRA Interim Status*

In response to the proposed rule (69 FR at 21198), one commenter expressed concern that sources operating under Resource Conservation and Recovery Act (RCRA) interim status would have to obtain approval of the RCRA implementing authority before proceeding with facility modifications required to meet the MACT standards. The commenter noted that delays in gaining that approval would adversely affect a source's ability to comply with the MACT standards on time. We responded to this issue in our response to comments document.<sup>54</sup> However, we did not address it in either the preamble or the final rule itself. Consequently, this appears to be an ongoing source of confusion among affected sources, as well as some regulatory agencies. In order to promote consistent interpretation of the RCRA interim status requirements across all jurisdictions, the discussion that follows reiterates EPA's long-standing position previously set forth in the comment response document. States are strongly encouraged to adhere to this interpretation in order to facilitate timely compliance with the HWC MACT replacement standards.

At issue here is the interpretation of § 270.72(a)(3), that requires sources operating under interim status to obtain approval from the regulatory authority for "Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes \* \* \*" The term "process" refers to the general category of waste treatment, storage, or disposal (*e.g.*, incinerator, cement kiln, boiler, etc.) as indicated on the Part A permit form (EPA Form 8700-23). It does not include air pollution control devices, monitoring equipment, or process controls, none of which are identified on the Part A form. Consequently, changes to those monitoring and control systems do not require approval under § 270.72(a)(3). Neither would a change in operating conditions (*e.g.*, an increase in the combustion temperature) be subject to § 272.72(a)(3) because operating conditions are also not included in the Part A permit form.

We note that sources subject to the boiler and industrial furnace (BIF) requirements (40 CFR part 266, subpart H) under RCRA would be required to submit revised certifications of compliance when making any changes that could affect emissions or operating parameter limits. However, those changes do not require prior approval of the regulatory authority so they should not impede your compliance with the HWC MACT standards.

#### **VI. Revised Time Lines**

The time line labeled as Figure 1 published in the final rule at 70 FR at 59524, depicts an incorrect "effective" date for the Phase 1 Replacement Standards and Phase 2 Standards final rule. As a result, all subsequent dates on the time line are also incorrect. The time line labeled as Figure 2 published in the final rule at 70 FR at 59525 incorrectly includes the rule's effective date, as well as subsequent dates based on the effective date. Today's notice revises both time lines to reflect the correct dates or time frames associated with the compliance activities for both Phase 1 and Phase 2 sources. In addition to revising the dates, we felt it would be helpful to include the following remarks for both Figures 1 and 2.

With respect to figure 1, the time line is now broken into three sections to reflect the separate requirements (*i.e.*, different time frames) negotiated for Phase 1 sources for the Replacement Standards. The first section of the time line, beginning with the promulgation date, provides compliance activities and dates applicable to both Phase 1 and Phase 2 sources. The second and third portions of the time line represent Phase 1 and Phase 2 sources individually, beginning with the first compliance activity that specifies a different deadline; that is, the comprehensive performance test (CPT) plan and continuous monitoring system (CMS) performance evaluation test plan due date.

Note that the dates on the time line generally do not apply to sources that elect to comply with the final standards early, as well as to sources that have received site-specific compliance date or performance test date extensions. Also, as a result of expanding the time line into three sections from the previous two, we have removed the note at the bottom of the page, identified by an asterisk that discussed Title V requirements, to provide better visual clarity. Rather, we have chosen to

reiterate it here in this notice. Therefore, for the activity identified as *Include NOC in Title V Permit*, we note that because of the variability of the Title V program requirements, most Title V permit actions (application due dates, revisions, reopenings, etc.) are not included in this time line. Please refer to the particular source's current Title V permit status, Title V regulations, and individual permitting authority's requirements.

Finally, the compliance activity dates that are tied to when sources commence their performance test are identified with an asterisk. We characterize these dates as "no later than dates." This assumes that the source commences testing on the last allowable day. All compliance activities marked with an asterisk would therefore shift back by the number of days the source commences testing prior to the last allowable day. For example, if a Phase 2 source commences testing on April 4, 2009 (versus the 14th, which is the last allowable day without an extension), then it must submit its CPT plan and CMS performance evaluation test plan on April 4, 2008. Also, that source must complete its CPT by June 4, 2009 and submit its notification of compliance no later than September 4, 2009.

In regard to Figure 2, we have removed the dates from the time line, since they would not be representative of a new unit's compliance deadlines. A new unit's compliance activity deadlines are based on when it begins operations, which is the unit's compliance date and the date it must place a Documentation of Compliance in the operating record. Thus, the effective date of the rule is not applicable to new units and consequently, the Notice of Intent to Comply (NIC) provisions in §§ 63.1210(b)(3) and (c)(1) that specify a deadline based on the effective date of the rule, also would not apply. Since we have always intended that new units follow the same NIC procedures as existing units, we have revised §§ 63.1210(b)(3) and (c)(1) to also include the period of time between the NIC activities so that they correctly apply to both existing and new units. (See Section VII.C (Clarifications to the NIC Provisions for New Units) below for additional discussion.) The time line now reflects the period of time that elapses between public review of the draft NIC and CPT plan, the NIC public meeting, and the final NIC submission deadline. Aside from the corrections

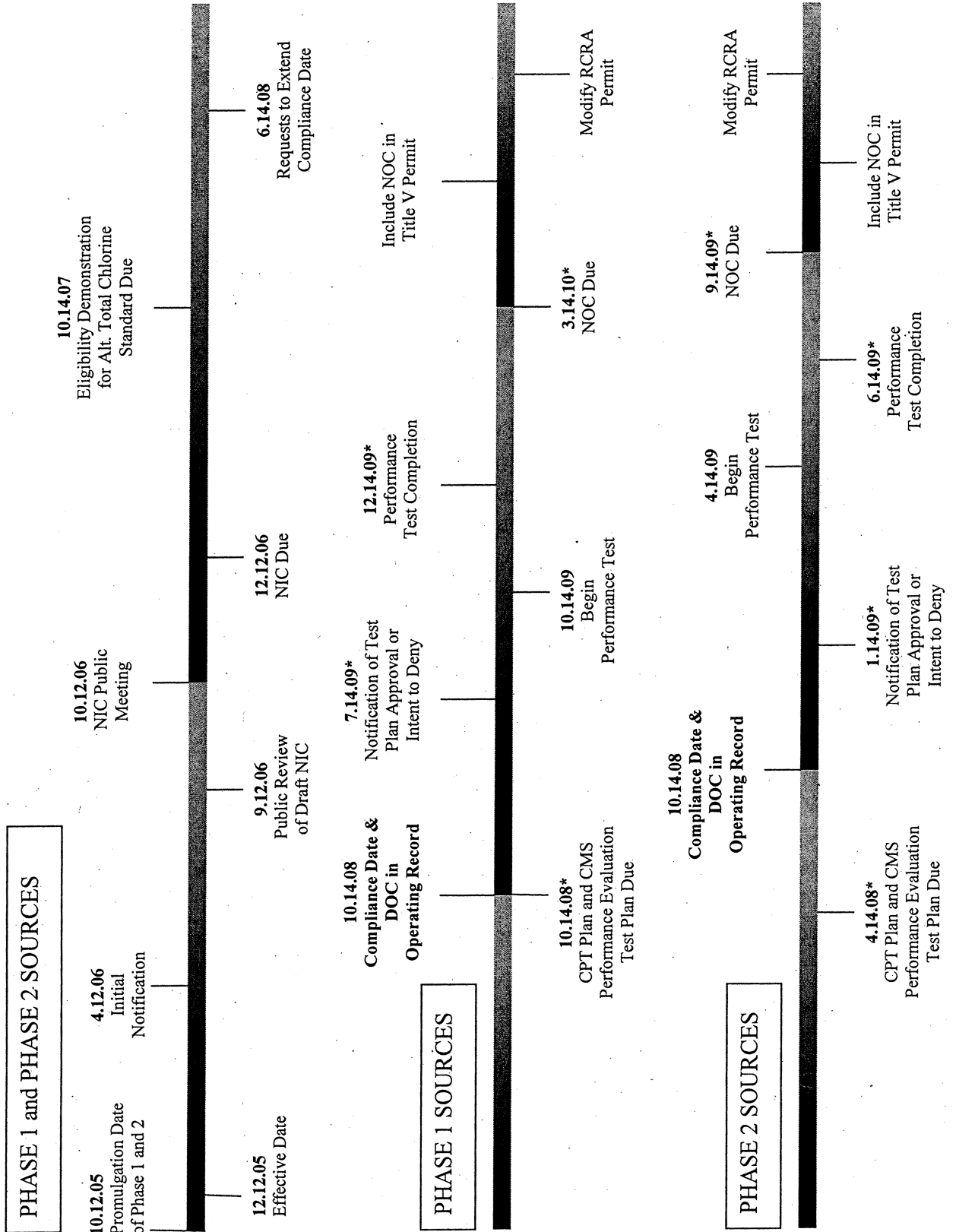
<sup>54</sup> USEPA, "Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume IV: Permitting," September 2005, Pages 16-17.

made to this time line, we would like to remind readers that the preamble to the final rule contains a detailed discussion

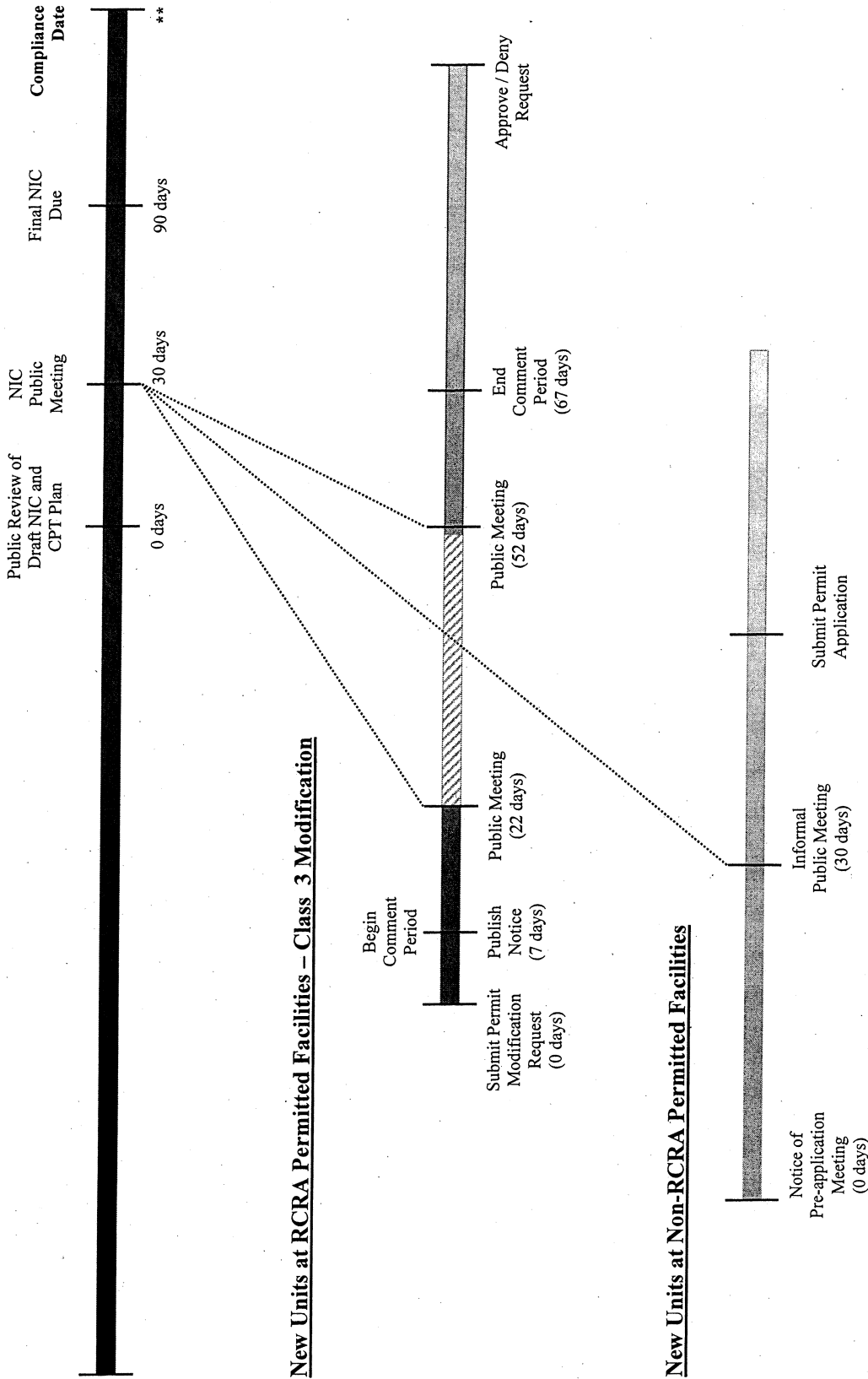
of the compliance activities listed on Figure 2. See 70 FR at 59522–59523.

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**Figure 1. Time Line for Phase 1 Replacement Standards and Phase 2 Standards – Existing Sources**



**Figure 2. NIC and CPT Plan Time Line - New Units**



\*\* This is the date a new unit begins operations and places a documentation of compliance in its operating record.

## VII. Technical Corrections and Other Clarification

We identified minor drafting errors and inadvertent omissions after promulgation of the HWC NESHAP. In this section we are providing advance notice of technical corrections that we plan to promulgate when we take final action on this proposed rule. In addition, we provide clarification of the applicability of Title V permit requirements to Phase 2 area sources.

### A. What Typographical Errors Would We Correct?

We would revise § 63.1206(a)(2)(ii)(A) to correct the cut-off date after which a new or reconstructed source is subject to the new source emission standards. Currently, this paragraph incorrectly specifies October 12, 2005, which is the date the final rule was published, instead of April 20, 2004, which is the date the proposed rule was published. See proposed revision to § 63.1206(a)(2)(ii)(A).

We also would correct the paragraph heading to § 63.1206(a)(2) that currently refers to “hydrogen chloride production furnaces” instead of “hydrochloric acid production furnaces.” See proposed revision to § 63.1206(a)(2). In addition, we would correct a provision that inadvertently uses incorrect terminology when referring to emissions of “hydrogen chloride and chlorine gas.” See proposed revision § 63.1206(b)(16).

We also would revise § 63.1210(b) to clarify that the public meeting and notice requirements of the notice of intent to comply (NIC) provisions under paragraph (c) of this section do not apply to sources that have already submitted their NIC. We would also revise § 63.1210(b) to make clear that the NIC certification requirements under § 63.1212(a) likewise do not apply to sources that have already submitted their NIC. See proposed revision to § 63.1210(b).

We also would correct the formula under § 63.1215(b)(2) that is used to calculate the annual average toxicity-weighted HCl-equivalent emission rate for each hazardous waste combustor under the health-based compliance alternatives for total chlorine. The formula uses incorrectly the term  $ER_{L_{TW}}$  instead of  $ER_{L_{TW}}$  for the annual average HCl toxicity-weighted emission rate considering long-term exposures. See proposed revision to § 63.1215(b)(2).

We also would correct several other typographical errors in § 63.1215. First, paragraph (b)(6)(ii)(C) would be revised by replacing the word “the se” with “these” and the term “Method 26/26a” with “Method 26/26A.” Additionally,

paragraph (f)(5)(ii)(A) would be revised by replacing the word “you” with “your.” Finally, we would revise paragraphs (a)(2) and (b)(3) so that the term “aREL” (acute reference exposure level) is used consistently throughout § 63.1215. See proposed revisions to §§ 63.1215(a)(2), (b)(3), (b)(6)(ii)(C) and (f)(5)(ii)(A).

We also would revise the total chlorine standards for existing and new liquid fuel boilers that burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater by expressing the emission standard with two significant figures. Currently, the total chlorine standards under §§ 63.1217(a)(6)(ii) and (b)(6)(ii) are expressed with three significant figures. This is inconsistent with how emission standards are expressed in the HWC NESHAP (see § 63.1217(d) and 64 FR at 52848). Therefore, we would revise the total chlorine standard from  $5.08E-02$  to  $5.1E-02$  lb combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste. See proposed revisions to § 63.1217(a)(6)(ii) and (b)(6)(ii).

### B. What Citations Would We Correct?

We would revise an incorrect citation in § 63.1206(b)(14)(iv) that refers inadvertently to paragraphs (e)(2) and (e)(3) instead of (b)(14)(ii) and (iii) in § 63.1206. See proposed revision to § 63.1206(b)(14)(iv).

Paragraphs (g)(2)(i) and (ii) under § 63.1209 refer inadvertently to paragraph (g)(2)(iv) instead of (g)(2)(v). We would revise these incorrect citations. See proposed revisions to §§ 63.1209(g)(2)(i) and (ii).

We also would revise an incorrect citation in § 63.1209(n)(2)(vii) that refers inadvertently to paragraphs (l)(1)(i) through (iii) instead of (n)(2)(ii) through (vi). See proposed revision to § 63.1209(n)(2)(vii).

We also would revise an incorrect citation in § 63.1215(a)(1)(i). This paragraph refers inadvertently to paragraph (b)(4) instead of (b)(7) of § 63.1215. See proposed revision to § 63.1215(a)(1)(i).

In the final rule, we amended § 264.340(b) by adding a new paragraph (b)(5) stating that the particulate matter standard under § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standards under §§ 63.1206(b)(14) and 63.1219(e). However, the addition of paragraph (b)(5) included a requirement that was redundant to existing requirements under paragraph (b)(3) of that same

section. We would remove this redundancy by combining the requirements of paragraphs (b)(3) and (b)(5) into a revised paragraph (b)(3). See proposed revision to § 264.340(b).

We also would revise an incorrect citation in § 266.100(b)(3) that contains two subparagraphs designated as (b)(3)(ii). This revision would redesignate the second paragraph (b)(3)(ii) as (b)(3)(iii). See proposed revision to § 266.100(b)(3).

### C. Corrections to the NIC Provisions for New Units

In the final rule, we established additional Notice of Intent to Comply (NIC) provisions for new units to ensure that the public would be provided opportunities to participate early in the regulatory development process. This included providing the public with combustor-specific information equivalent to what would be required via the RCRA permitting process for hazardous waste combustors. Recall that we no longer require new units to develop trial burn plans and provide suggested conditions for the various phases of operation in their permit applications or permit modification requests. See 70 FR at 59520. The NIC provisions for new units, located under §§ 63.1212(b) and (c), were developed with the above in mind.

While revising the time line for new units (see Figure 2 shown above in Section VI (Revised Time Lines)) it became apparent that we overlooked the fact that the final rule's effective date has no bearing on new units. A new unit's compliance activity deadlines are based on when it begins operations, which is the unit's compliance date and the date it must place a Documentation of Compliance in the operating record. Therefore, the NIC deadlines are only based upon each individual NIC compliance activity. For example, the clock will begin when the new unit provides the draft NIC and draft CPT plan to the public for review. Once the draft NIC and draft CPT plan are made available for public review, the combined public meeting must occur 30 days later, followed by the final NIC submission an additional 60 days later. Since the public meetings for the NIC and the RCRA pre-application or modification request must occur simultaneously, we anticipate that the new unit will plan accordingly and work with its permitting authorities to determine the most suitable time to begin the NIC compliance process.

Although the time line for new units has been corrected to remove the effective date and the dates listed for the NIC activities, the NIC regulatory

language in § 63.1210(b)(3) and (c)(1) must be amended to also account for new units. While the additional NIC provisions for new units are located in § 63.1212(b) and (c), they contain several references to the core NIC provisions in § 63.1210(b) and (c). Obviously, we have always intended that new units follow the same NIC procedures as existing units, in addition to the supplemental requirements for new units. In developing the additional requirements under § 63.1212, we inadvertently neglected to revise § 63.1210(b)(3) and (c)(1) to include a specific number of days between NIC compliance activities in addition to the effective date. Therefore, the NIC provisions under §§ 63.1210(b)(3) and (c)(1) would be revised to correctly apply to both existing and new units.

Lastly, upon review of the regulations at § 63.1212, we have discovered that paragraph (b)(4) should have included references to § 63.1210(c)(1) and (c)(2). As discussed above, it has always been our intent that new units follow the same NIC procedures as existing units. However, without the proper references in § 63.1212(b)(4), the requirements of § 63.1210(c)(1) and (c)(2) could be read to not apply to new units. Section 63.1212(b)(4) would be revised to clarify that the core NIC provisions continue to be applicable. Also, § 63.1212 (b)(1) would be revised to remove “according to” and “per” and add the words “pursuant to” so that it is consistent with other paragraphs in (b); and § 63.1212(b)(3) would be revised to correct a typographical error.

#### *D. Clarification of the Applicability of Title V Permit Requirements to Phase 2 Area Sources*

In the preamble to the final rule, we discuss the applicability of Title V permit requirements to Phase 2 area sources (see 70 FR at 59523). For example, we note that in the 2004 proposal we stated that we were not making a positive area source finding for Phase 2 area sources as we have for Phase 1 area sources (69 FR at 21212 and 21325). Regardless of this, however, we explain that Phase 2 area sources are still subject to the requirement to obtain a Title V permit because they are subject to section 112 standards. See section 502(a) of the CAA and 40 CFR 70.3(b)(2) and 71.3(b)(2).

On this same page in the final rule preamble, we further explain that, in accordance with 40 CFR 70.3(c) and 70.5(c)(3), a Title V permit application needs to include emissions information relative to all regulated air pollutants that are emitted from the subject units,

not just the specific HAP pollutants regulated by the MACT standards. However, we then say, “Although, the permit itself would contain standards only for the HAP subject to MACT standards (the section 112(c)(6) HAP).” Initially this phrase was part of a longer sentence in a draft version of the preamble and was inadvertently incorporated into the final preamble. While the intent of the sentence was to note that a source cannot be required to control more HAP than is regulated by the relevant MACT standards, this sentence is not needed given that Title V permits cannot modify applicable requirements to address additional HAP. Moreover, this phrase is confusing given that all applicable requirements that apply to the subject area source units, not just the relevant MACT standard requirements, are required to be included in the permits for these units. Lastly, this phrase is confusing because it was included at a point in the discussion where permit applications, not permits, were being discussed.

Therefore, in this action, we reiterate that a Title V permit application needs to include emissions information relative to all regulated air pollutants that are emitted from the units subject to the MACT standards, not just the specific HAP pollutants regulated by the MACT standards. Additionally, all MACT standards that apply to the subject units (e.g., subpart EEE for hazardous waste burning boilers and subpart DDDDD for non-hazardous waste burning boilers, etc.), as well as all other applicable requirements that apply to these subject units, e.g., State Implementation Plan requirements, are required to be included in the Title V permits for Phase 2 area sources.

### **VIII. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action.” Pursuant to the terms of Executive Order 12866, it has been determined that today’s proposed rule constitutes a “significant regulatory action” because this action raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This proposed rule is not considered to be an economically significant action because the total social costs for this proposed rule are significantly below the \$100 million threshold established for economically significant actions.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because there is no additional burden on the industry as a result of the proposed rule, and the ICR has not been revised.

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

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

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (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 impact of today’s proposed rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administrations’ regulations at 13 CFR 121.201; (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 the field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant economic impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act of 1995*

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

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Although our best estimate of total social costs of the final rule was \$22.6 million per year, today's notice does not add new requirements that would increase this cost. See 70 FR at 59532. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the notice of reconsideration contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Thus, today's proposed rule is not subject to the requirements of section 203.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule, as proposed, is not projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur at selected States and/or EPA regional offices if these entities experience increased administrative needs or information requests. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 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." This notice of reconsideration does not have tribal implications, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this notice of reconsideration.

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

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

Today's proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under point one of the Order, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed Reg 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

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

As described in the October 2005 final rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities

unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified the following consensus standards that were considered practical alternatives to the specified EPA test methods: (1) American Society for Testing and Materials (ASTM) D6735-01, "Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method," and (2) American Society of Mechanical Engineers (ASME) standard QHO-1-2004, "Standard for the Qualification and Certification of Hazardous Waste Incineration Operators." Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

#### List of Subjects

##### 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

##### 40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

##### 40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: August 24, 2006.

**Stephen L. Johnson,**  
Administrator.

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

### PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Section 63.1203 is amended by adding paragraph (e) to read as follows:

**§ 63.1203 What are the standards for hazardous waste incinerators that are effective until compliance with the standards under § 63.1219?**

\* \* \* \* \*

(e) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1219 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1219 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1219 pursuant to § 63.1206 and any extensions granted thereunder.

3. Section 63.1204 is amended by adding paragraph (i) to read as follows:

**§ 63.1204 What are the standards for hazardous waste burning cement kilns that are effective until compliance with the standards under § 63.1220?**

\* \* \* \* \*

(i) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1220 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1220 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1220 pursuant to § 63.1206 and any extensions granted thereunder.

4. Section 63.1205 is amended by adding paragraph (e) to read as follows:

**§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns that are effective until compliance with the standards under § 63.1212?**

\* \* \* \* \*

(e) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1221 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1221 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1221 pursuant to § 63.1206 and any extensions granted thereunder.

5. Section 63.1206 is amended as follows:

a. By revising paragraph (a)(2) paragraph heading and the first sentence of paragraph (a)(2)(ii)(A).

b. By revising paragraphs (b)(14)(iv) and (b)(16) introductory text.

c. By revising paragraph (c)(9) introductory text.

**§ 63.1206 When and how must you comply with the standards and operating requirements?**

(a) \* \* \*

(2) *Compliance date for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that burn hazardous waste for standards under §§ 63.1216, 63.1217, and 63.1218.*

\* \* \* \* \*

(ii) \* \* \* (A) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards of this subpart by the later of October 12, 2005, or the date the source starts operations, except as provided by paragraph (a)(2)(ii)(B) of this section. \* \* \*

\* \* \* \* \*

(b) \* \* \*  
(14) \* \* \*

(iv) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

\* \* \* \* \*

(16) Compliance with subcategory standards for liquid fuel boilers. You must comply with the mercury, semivolatile metals, low volatile metals, and hydrogen chloride and chlorine gas standards for liquid fuel boilers under § 63.1217 as follows:

(c) \* \* \*

(9) *Particulate matter detection system requirements.* If your combustor is equipped with an electrostatic precipitator or ionizing wet scrubber and you elect not to establish under § 63.1209(m)(1)(iv) site-specific control

device operating parameter limits that are linked to the automatic waste feed cutoff system under paragraph (c)(3) of this section, or your combustor is equipped with a fabric filter and you elect to use a particulate matter detection system pursuant to paragraph (c)(8)(i)(B) of this section, you must continuously operate a particulate matter detection system that meets the specifications and requirements of paragraph (c)(9)(i) through (iii) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(9)(iv) through (v) of this section.

6. Section 63.1207 is amended as follows:

- a. By adding paragraph (b)(3)(vi).
- b. By revising paragraphs (d)(1), (d)(2), and (d)(4).
- c. By revising the first sentence of paragraphs (g)(2)(i) and (g)(2)(ii).
- d. By revising paragraph (m).

**§ 63.1207 What are the performance testing requirements?**

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*

(vi) Sources that are required to perform the one-time dioxin/furan test pursuant to paragraph (b)(3) of this section are not required to perform confirmatory performance tests.

\* \* \* \* \*

- (d) \* \* \*

(1) *Comprehensive performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test used to show compliance with §§ 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, or 63.1221. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

(2) *Confirmatory performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence confirmatory performance testing no later than 31 months after the date of commencing the previous comprehensive performance test used to show compliance with §§ 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, or 63.1221. If you submit data in lieu of the initial performance test, you must commence the initial confirmatory performance test within 31 months of the date six months after the compliance date. To ensure

that the confirmatory test is conducted approximately midway between comprehensive performance tests, the Administrator will not approve a test plan that schedules testing within 18 months of commencing the previous comprehensive performance test.

\* \* \* \* \*

(4) *Applicable testing requirements under the interim standards.* (i) *Waiver of periodic comprehensive performance tests.* Except as provided by paragraph (c)(2) of this section, you must conduct only an initial comprehensive performance test under the interim standards (i.e., the standards published in the **Federal Register** on February 13, 2002); all subsequent comprehensive performance testing requirements are waived under the interim standards. The provisions in the introductory text to paragraph (d) and in paragraph (d)(1) of this section apply only to tests used to demonstrate compliance with the permanent replacement standards promulgated on or after October 12, 2005.

(ii) *Waiver of confirmatory performance tests.* You are not required to conduct a confirmatory test under the interim standards (i.e., the standards published in the **Federal Register** on February 13, 2002). The confirmatory testing requirements in the introductory text to paragraph (d) and in paragraph (d)(2) of this section apply only after you have demonstrated compliance with the permanent replacement standards promulgated on or after October 12, 2005.

\* \* \* \* \*

- (g) \* \* \*
- (2) \* \* \*

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(v) of this section. \* \* \*

(ii) Each operating limit (specified in § 63.1209) established to maintain compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(v) of this section. \* \* \*

\* \* \* \* \*

(m) *Waiver of performance test.* You are not required to conduct performance tests to document compliance with the mercury, semivolatile metals, low volatile metals, or hydrogen chloride/ chlorine gas emission standards under the conditions specified in paragraphs (m)(1) or (m)(2) of this section. The waiver provisions of this paragraph

apply in addition to the provisions of § 63.7(h).

(1) *Emission standards based on exhaust gas flow rate.* (i) You are deemed to be in compliance with an emission standard based on the volumetric flow rate of exhaust gas (i.e. µg/dscm or ppmv) if the twelve-hour rolling average maximum theoretical emission concentration (MTEC) determined as specified below does not exceed the emission standard:

(A) Determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride from all feedstreams;

(B) Determine the stack gas flowrate; and

(C) Calculate a MTEC for each standard assuming all mercury, semivolatile metals, low volatile metals, or total chlorine (organic and inorganic) from all feedstreams is emitted;

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all feedstreams according to § 63.1209(c);

(B) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(C) Continuously calculate and record in the operating record the MTEC under the procedures of paragraph (m)(1)(i) of this section; and

(D) Interlock the MTEC calculated in paragraph (m)(1)(i)(C) of this section to the AWFCO system to stop hazardous waste burning when the MTEC exceeds the emission standard.

(iii) In lieu of the requirement in paragraphs (m)(1)(ii)(C) and (D) of this section, you may:

(A) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(1)(i)(C) of this section is below the applicable emission standard; and

(B) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(1)(iii)(A) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(1)(iii)(A) of this section.

(2) *Emission standards based on hazardous waste thermal concentration.*

(i) You are deemed to be in compliance with an emission standard specified on a hazardous waste thermal concentration basis (i.e., pounds emitted per million Btu of heat input) if the HAP thermal concentration in the waste feed does not exceed the allowable HAP thermal concentration emission rate.

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all hazardous waste feedstreams in accordance with § 63.1209(c);

(B) Determine and record the higher heating value of each hazardous waste feed;

(C) Continuously calculate and record the thermal feed rate of all hazardous waste feedstreams by summing the products of each hazardous waste feed rate multiplied by the higher heating value of that hazardous waste;

(D) Continuously calculate and record the total HAP thermal feed concentration for each constituent by dividing the HAP feedrate determined in paragraph (m)(2)(ii)(A) of this section by the thermal feed rate determined in paragraph (m)(2)(ii)(C) of this section for all hazardous waste feedstreams;

(E) Interlock the HAP thermal feed concentration for each constituent with the AWFCO to stop hazardous waste feed when the thermal feed concentration exceeds the applicable thermal emission standard.

(3) When you determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride for purposes of this provision, except as provided by paragraph (m)(4) of this section, you must assume that the analyte is present at the full detection limit when the feedstream analysis determines that the analyte is not detected is the feedstream.

(4) Owners and operators of hazardous waste burning cement kilns and lightweight aggregate kilns may assume that mercury is present in raw material at half the detection limit when the raw material feedstream analysis determines that mercury is not detected.

(5) You must state in the site-specific test plan that you submit for review and approval under paragraph (e) of this section that you intend to comply with the provisions of this paragraph. You must include in the test plan documentation that any surrogate that is proposed for gas flowrate adequately correlates with the gas flowrate.

7. Section 63.1209 is amended as follows:

a. By revising paragraphs (l)(1)(iii)(B), (l)(1)(iii)(C) introductory text, (l)(1)(iii)(D)(1), and (l)(1)(iii)(D)(2).

b. By revising paragraphs (n)(2)(iii)(A), (n)(2)(v)(A)(2)(iv), (n)(2)(v)(B)(1)(i), (n)(2)(v)(B)(1)(ii), (n)(2)(v)(B)(2), and the first sentence of paragraph (n)(2)(vii) introductory text.

c. By revising paragraph (o)(1)(ii)(A)(3).

**§ 63.1209 What are the monitoring requirements?**

\* \* \* \* \*

(l) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(B) When complying with the emission standards under §§ 63.1204 and 63.1220(a)(2)(ii)(A) and (b)(2)(ii)(A), you must establish a 12-hour rolling average limit for the feedrate of mercury in all feedstreams as the average of the test run averages;

(C) Except as provided by paragraph (l)(1)(iii)(D) of this section, when complying with the hazardous waste maximum theoretical emission concentration (MTEC) under § 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B), you must:

\* \* \* \* \*

(D) \* \* \*

(1) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iii)(C)(4) of this section is below the operating requirement under paragraphs §§ 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B); and

(2) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iii)(D)(1) of this section.

\* \* \* \* \*

(n) \* \* \*

(2) \* \* \*

(iii) \* \* \* (A) When complying with the emission standards under § 63.1220(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams. You must calculate hazardous waste thermal concentrations for semivolatile metals and low volatile metals for each run as the total mass feedrate of semivolatile metals or low volatile metals for all hazardous waste feedstreams divided by the total heat

input rate for all hazardous waste feedstreams. The 12-hour rolling average feedrate limits for semivolatile metals and low volatile metals are the average of the test run averages, calculated on a thermal concentration basis, for all hazardous waste feeds.

\* \* \* \* \*

(v) \* \* \*

(A) \* \* \*

(2) \* \* \*

(iv) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

\* \* \* \* \*

(B) \* \* \*

(1) \* \* \*

(i) The 12-hour rolling average feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chromium in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler. You must establish the 12-hour rolling average feedrate limit as the average of the test run averages.

(ii) You must comply with the hazardous waste chromium thermal concentration limit by determining the feedrate of chromium in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MMBtu/hr) at least once each minute as [hazardous waste chromium feedrate (lb/hr)/hazardous waste thermal feedrate (MMBtu/hr)].

(2) Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb. You must establish a 12-hour rolling average limit for the total feedrate (lb/hr) of chromium in all feedstreams as the average of the test run averages.

\* \* \* \* \*

(vii) Extrapolation of feedrate levels. In lieu of establishing feedrate limits as specified in paragraphs (n)(2)(ii) through (vi) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and §§ 63.1207(e) and (f) to use the semivolatile metal and low volatile metal feedrates and associated emission

rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. \* \* \*

- (o) \* \* \*
(1) \* \* \*
(ii) \* \* \*
(A) \* \* \*

(3) You must comply with the feedrate limit by determining the mass feedrate of hazardous waste feedstreams (lb/hr) at least once a minute and by knowing the chlorine content (organic and inorganic, lb of chlorine/lb of hazardous waste) and heating value (Btu/lb) of hazardous waste feedstreams at all times to calculate a 1-minute average feedrate measurement as [hazardous waste chlorine content (lb of chlorine/lb of hazardous waste feed)/hazardous waste heating value (Btu/lb of hazardous waste)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

\* \* \* \* \*

8. Section 63.1210 is amended by revising paragraphs (b) introductory text, (b)(3), and (c)(1) to read as follows:

§ 63.1210 What are the notification requirements?

\* \* \* \* \*

(b) Notification of intent to comply (NIC). These procedures apply to sources that have not previously complied with the requirements of paragraphs (b) and (c) of this section, and to sources that previously complied with the NIC requirements of §§ 63.1210 and 63.1212(a), which were in effect prior to October 11, 2000, that must make a technology change requiring a Class 1 permit modification to meet the standards of §§ 63.1219, 63.1220, and 63.1221.

\* \* \* \* \*

(3) You must submit the final NIC to the Administrator no later than one year following the effective date of the emission standards of this subpart or 60 days following the informal public meeting.

(c) \* \* \* (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart or 30 days following notice of the informal public meeting, you must hold at least one informal meeting with the public to discuss the anticipated activities described in the draft NIC for achieving compliance with the emission standards of this subpart. You must post a sign-in sheet or otherwise provide a voluntary

opportunity for attendees to provide their names and addresses.

\* \* \* \* \*

9. Section 63.1212 is amended by revising paragraphs (b)(1), (b)(3), and (b)(4) to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC?

\* \* \* \* \*

(b) \* \* \*

(1) Prepare a draft NIC pursuant to § 63.1210(b) and make it available to the public upon issuance of the notice of public meeting pursuant to § 63.1210(c)(3);

\* \* \* \* \*

(3) Provide notice to the public of a pre-application meeting pursuant to § 124.30 of this chapter or notice to the public of a permit modification request pursuant to § 270.42 of this chapter; and

(4) Hold an informal public meeting, pursuant to §§ 63.1210(c)(1) and (c)(2), 30 days following notice of the NIC public meeting and notice of the pre-application meeting or notice of the permit modification request to discuss anticipated activities described in the draft NIC and pre-application or permit modification request for achieving compliance with the emission standards of this subpart.

\* \* \* \* \*

10. Section 63.1215 is amended as follows:

- a. By revising paragraph (a)(1)(i).
b. By revising the definitions of "1-Hour Average HCl-Equivalent Emission Rate" and "1-Hour Average HCl-Equivalent Emission Rate Limit" in paragraph (a)(2).
c. By revising paragraphs (b)(2), (b)(3), and (b)(6)(ii)(C).
d. By revising paragraphs (e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(i)(D).
e. By adding paragraph (e)(3).
f. By revising paragraph (f)(5)(ii)(A).
g. By revising paragraph (h)(2)(i).

§ 63.1215 What are health-based compliance alternatives for total chlorine?

(a) \* \* \*

(1)

(i) Identify a total chlorine emission concentration (ppmv) expressed as chloride (Cl-) equivalent for each on-site hazardous waste combustor. You may select total chlorine emission concentrations as you choose to demonstrate eligibility for the risk-based limits under this section, except as provided by paragraph (b)(7) of this section;

\* \* \* \* \*

(2) \* \* \*

1-Hour Average HCl-Equivalent Emission Rate means the HCl-equivalent

emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELS as the health risk metric for acute exposure.

1-Hour Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELS as the health risk metric for acute exposure and which ensures that maximum 1-hour average ambient concentrations of HCl-equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

\* \* \* \* \*

(b) \* \* \*

(2) Annual average rates. You must calculate annual average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

ER\_LTW = ER\_HCl + ER\_Cl2 x (RfC\_HCl/RfC\_Cl2)

Where:

ER\_LTW is the annual average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering long-term exposures, lb/hr

ER\_HCl is the emission rate of HCl in lbs/hr

ER\_Cl2 is the emission rate of chlorine in lbs/hr

RfC\_HCl is the reference concentration of HCl

RfC\_Cl2 is the reference concentration of chlorine

(3) 1-hour average rates. You must calculate 1-hour average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

ER\_STW = ER\_HCl + ER\_Cl2 x (aREL\_HCl/aREL\_Cl2)

Where:

ER\_STW is the 1-hour average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering 1-hour (short-term) exposures, lb/hr

ER\_HCl is the emission rate of HCl in lbs/hr

ER\_Cl2 is the emission rate of chlorine in lbs/hr

aREL\_HCl is the aREL for HCl
aREL\_Cl2 is the aREL for chlorine

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(C) You must calculate the 1-hour average HCl-equivalent emission rate using these HCl and Cl2 emission rates and the equation in paragraph (b)(3) of this section.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) Your permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or to achieve the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. If your eligibility demonstration is disapproved, the permitting authority may extend the compliance date of the total chlorine standards up to one year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT total chlorine standards.

(C) If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration provided that you have made a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner. If the permitting authority believes that you have not made a good faith effort to provide complete and accurate information or to respond to any requests for additional information, however, the authority may notify you in writing by the compliance date that you have not met the conditions for complying with the health-based compliance alternative without prior approval. Such notice will explain the basis for concluding that you have not made a good faith effort to comply with the health-based compliance alternative by the compliance date.

(D) If your permitting authority issues a notice of intent to disapprove your eligibility demonstration after the compliance date, the authority will identify the basis for that notice and specify how much time you will have to submit additional information or to comply with the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. The permitting authority may extend the compliance date of the total chlorine standards up to one-year to allow you to

make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT standards for total chlorine.

\* \* \* \* \*

(3) The operating requirements in the eligibility demonstration are applicable requirements for purposes of parts 70 and 71 of this chapter and will be incorporated in the title V permit.

(f) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) You must determine your chlorine emissions to be the higher of the value measured by Method 26/26A, or an equivalent method, or the value calculated by the difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26A, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735-01, or an equivalent method.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(i) *Proactive review.* You must submit for review and approval with each comprehensive performance test plan either a certification that the information used in your eligibility demonstration has not changed in a manner that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, or a revised eligibility demonstration.

\* \* \* \* \*

11. Section 63.1216 is amended by revising paragraph (a)(7) to read as follows:

**§ 63.1216 What are the standards for solid fuel boilers that burn hazardous waste?**

(a) \* \* \*

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 69 mg/dscm corrected to 7 percent oxygen.

\* \* \* \* \*

12. Section 63.1217 is amended by revising paragraphs (a)(6)(ii), (a)(7), and (b)(6)(ii) to read as follows:

**§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?**

(a) \* \* \*

(6) \* \* \*

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of  $5.1 \times 10^{-2}$  lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 79 mg/dscm corrected to 7 percent oxygen.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of  $5.1 \times 10^{-2}$  lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

\* \* \* \* \*

13. Section 63.1219 is amended by revising paragraphs (a)(7) and (b)(7) to read as follows:

**§ 63.1219 What are the replacement standards for hazardous waste incinerators?**

(a) \* \* \*

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 30 mg/dscm corrected to 7 percent oxygen.

(b) \* \* \*

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 3.5 mg/dscm corrected to 7 percent oxygen.

\* \* \* \* \*

14. Section 63.1220 is amended as follows:

a. By revising paragraphs (a)(2)(ii) and (a)(7)(i).

b. By revising paragraphs (b)(2)(ii) and (b)(7)(i).

**§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?**

(a) \* \* \*

(2) \* \* \*

(ii) Either:

(A) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen, or

(B) A hazardous waste feed maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

\* \* \* \* \*

(7) \* \* \*

(i) Emissions in excess of 65 mg/dscm corrected to 7 percent oxygen; and

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Either:

(A) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen, or

(B) A hazardous waste feed maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

\* \* \* \* \*

(7) \* \* \*

(i) Emissions in excess of 5.3 mg/dscm corrected to 7 percent oxygen; and  
\* \* \* \* \*

15. Section 63.1221 is amended by revising paragraphs (a)(7) and (b)(7) to read as follows:

**§ 63.1221 What are the replacement standards for hazardous waste burning lightweight aggregate kilns?**

(a) \* \* \*

(7) Particulate matter emissions in excess of 57 mg/dscm corrected to 7 percent oxygen.

(b) \* \* \*

(7) Particulate matter emissions in excess of 22 mg/dscm corrected to 7 percent oxygen.

\* \* \* \* \*

**PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

16. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

17. Section 264.340 is amended as follows:

- a. By revising the first sentence of paragraph (b)(1) and paragraph (b)(3).
- b. By removing paragraph (b)(5).

**§ 264.340 Applicability.**

\* \* \* \* \*

(b) \* \* \* (1) Except as provided by paragraphs (b)(2) through (b)(4) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

\* \* \*

\* \* \* \* \*

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under §§ 63.1206(b)(14) and 63.1219(e) of this chapter.

\* \* \* \* \*

**PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES**

18. The authority citation for part 266 continues to read as follows:

**Authority:** 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

19. Section 266.100 is amended by redesignating the second paragraph (b)(3)(ii) as (b)(3)(iii).

**§ 266.100 [Amended]**

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