Comments Of The American Forest & Paper Association, Inc.: National Emission Standards For Hazardous Air Pollutants; Plywood And Composite Wood Products; Proposed Rule Amendments

70 Fed. Reg. 44011 (July 29, 2005)

Timothy G. Hunt
Senior Director
Air Quality Programs
American Forest & Paper Association, Inc.
1111 19th Street, N.W.
Suite 800
Washington, D.C. 20036

Of Counsel:
Claudia M. O'Brien
Latham & Watkins LLP
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004

September 12, 2005

TABLE OF CONTENTS

I. INTRODUCTION

AF&PA appreciates this opportunity to comment on EPA's Proposed Rule Amending the National Emissions Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products ("Wood MACT" or "PCWP MACT"). 70 Fed. Reg. 44011 (July 29, 2005). AF&PA is the national trade association of the forest, paper and wood products industry. AF&PA represents more than 200 companies and related trade associations that engage in or represent the manufacture of pulp, paper, paperboard and wood products. The forest products industry accounts for more than 7% of total U.S. manufacturing output, employs 1.5 million people, and ranks among the top ten manufacturing employers in 42 States.

AF&PA commends EPA for its issuance of this supplemental proposal, and strongly supports the vast majority of changes that EPA has proposed. In particular, AF&PA supports EPA's proposal to allow certain types of PCWP process units to utilize emissions estimates or emissions factors for purposes of the low-risk demonstration, rather than requiring testing of emissions sources that either have low emissions or are very difficult to test. As discussed further below, however, we do have some modifications and clarifications to recommend with respect to specific aspects of the emissions estimations.

In addition, AF&PA appreciates EPA's proposal to extend the low-risk demonstration deadline and EPA's willingness to entertain comment on whether the overall compliance deadline should be adjusted (either for some or for all sources). As discussed in more detail below, AF&PA believes that a compliance extension would be warranted for sources seeking to meet the criteria for inclusion in the low-risk subcategory, given the complexity of that undertaking. Alternatively, it would be appropriate (and less administratively complex and burdensome) to issue a compliance extension for all sources. At a minimum, however, AF&PA strongly supports EPA's proposed extension of the low-risk compliance demonstration deadline to April 1, 2007 – although we believe that either additional time or a "conditional" approval would be appropriate in certain limited instances, especially given the new health data on acrolein and acetaldehyde that is expected within the next 18 months. AF&PA also supports EPA's proposal to allow the use of preliminary data in certain low-risk demonstrations, although we request clarification on how this approach would work in practice.

The comments below address these issues in more detail, and also identify certain other issues on which AF&PA requests clarification or modification to the supplemental proposed rule.

II. AF&PA SUPPORTS MODIFYING THE TIMING OF THE COMPLIANCE DEADLINE OR, AT A MINIMUM, MODIFYING AND CLARIFYING THE TIMING FOR THE LOW-RISK DEMONSTRATIONS

A. AF&PA Would Support An Extension To The Wood MACT Compliance Deadline

EPA has requested comment on whether it should extend the MACT compliance deadline for sources whose low-risk demonstrations are disapproved, or for all PCWP sources.[1] AF&PA believes there is strong merit in extending the compliance deadline and will address the two EPA questions in turn. As a preliminary matter, AF&PA believes EPA has legal authority to provide a compliance extension. In terms of legal authority, the CAA provides that compliance with Title III standards must occur within 3 years from the effective date of the final rule. *See* CAA § 112(i)(3)(A). EPA granted the full three years for compliance with PCWP MACT. However, the supplemental proposal would make significant changes to the PCWP MACT and will have its own effective date, upon promulgation. Thus, it appears that under Section 112(i)(3)(A), the MACT compliance "clock" could re-start after promulgation of the final supplemental rule, enabling EPA to give any amount of time up to three years from the effective date of that rule for compliance. AF&PA, as explained below, requests a 10-month extension to the compliance deadline, not the maximum sixteen month that is possible.

1. Extension For Sources Planning To Enter The Low-Risk Subcategory

For low-risk sources, AF&PA believes EPA should consider an extension for those affected sources that plan to use the low-risk demonstration but face significant complexities in completing the risk assessment and making the low-risk demonstration to meet the current ambitious schedule. In addition, AF&PA believes that there may be a small number of mills that legitimately planned on becoming part of the low-risk subcategory but because of unforeseen circumstances or events fail to qualify late in the process.[2] To address this latter eventuality, AF&PA believes that EPA should eliminate the prohibition in Appendix B, § 10 on affected sources requesting a case-by-case compliance extension from the permitting authority if they fail to demonstrate that they are part of the low-risk subcategory. AF&PA anticipates that such an extension would be granted only if the failure to qualify (and the need for additional time to comply with MACT) was unforeseen, and the source would have the burden of making the

---

1 *See* 70 Fed. Reg. at 44022.

2 For example, there may be cases where a mill finds itself concluding it should qualify as low-risk in early 2006, only to discover in early 2007, for example, that it cannot qualify. The types of situations where this might arise are: (1) finding significantly higher levels of emissions from testing emission points than originally projected either from uncontrolled and controlled sources or after some emission reduction strategy has been implemented; (2) identifying modeling inaccuracies as a result of new meteorological data becoming available; or (3) learning of a land development project that alters key receptor locations and that will cause previously modeled risk that was below thresholds to then exceed risk thresholds.

necessary demonstration.[3] However, as currently written, even in meritorious cases, those sources would be prohibited from requesting additional time to comply.

Regarding the former situation, AF&PAs members have identified a number of factors or activities that will influence the timing for completing any low-risk demonstrations. The eight factors that influence the process are:

1. The time it takes to complete the necessary emission testing (it may take two rounds in some cases) or emission estimation (not allowed initially but proposed in the supplemental rule) for up to 13 HAPs from up to three dozen process units.
2. The time to conduct both a preliminary and final site specific risk assessment.
3. The time to secure capital for any necessary emission reduction strategies.
4. The time to plan for and implement pollution controls, pollution control strategies or other risk mitigation strategies (including stack height extensions).
5. Limited availability of qualified consultants and contractors to carry out the work in a timely manner.
6. Coordinating timing for companies with multiple mills, given limited staff with the technical expertise necessary to properly oversee testing.
7. EPA's needed schedule to adequately review and approve (or disapprove) the low-risk demonstration.
8. The time for a mill to prepare and submit the necessary information for the Title V permit that incorporates the necessary parameters to assure low-risks are maintained.

Some of these activities have already begun and some can occur concurrently but many must occur in sequence since the next step in the process is predicated on completion of an earlier task, and some cannot start until the rule is finalized. Overall, AF&PA estimates that it could take a mill between 21 and 38 additional months beyond the promulgation date of this supplemental rule to qualify for the low-risk subcategory. However, most mills should be able to complete all the necessary steps including EPA's review and submittal of a Title V application by August 1, 2008 – ten months beyond the current compliance date and thirty months beyond the expected February 2006 promulgation date.[4] Thus, the current schedule for making low-risk demonstrations is very ambitious if not impossible for many sources to meet. The following lays out the reasoning in more depth.

1. *Emissions testing/estimation*: AF&PA is very appreciative of EPA providing additional options for developing emission estimates (see comments in section III). However, a significant amount of time has elapsed between when AF&PA first raised the issue with EPA in June 2004 and the issuance of this proposal. As a result, a full year of the three year compliance time period has already gone by and an additional four months (until at

---

3 AF&PA believes that it would be acceptable for the regulation to specify that in these situations, the burden is on the source to demonstrate that the failure to qualify was unforeseen..

4 If promulgation is delayed, the extension period should be extended by as many months the final rules is published after February 1, 2006.

least January 2006) is likely for EPA to evaluate comments and finalize the changes so mills can rely on the new approaches. This leaves at most 15 months to complete and submit the low-risk demonstration by the proposed April 2007 deadline and only 21 months to be either in compliance with the MACT or accepted into the low-risk subcategory.[5] This timeframe is a challenge even if everything goes according to schedule, given the complexities of tasks.

The emission testing/estimation phase of the low-risk demonstration process involves several time consuming steps. A mill must develop a testing plan, issue RFPs and select source testing companies, and get states to approve testing protocols. This can take three to four months and most companies are in the process of completing these tasks this year. However, test planning is a continual process as new information influences subsequent testing plans, including the availability of additional methods. Once it is clear what emission sources must be tested, the testing itself must be scheduled and completed, a report prepared with sufficient documentation on methods and the QA/QC procedures followed. This step can take three to four months. Experience has shown that occasionally companies have to find another testing company when the original one does not perform according to expectations, adding another couple of months to the process. Another factor that increases the time needed for this phase is that the test methods required are very challenging. Even qualified testing contractors need to take extra precautions as they proceed. In addition, significant money is involved even at this early stage of the process (more than $100K for some facilities with multiple dryers and presses) that needs to be spent wisely. If it were not for the changes in the supplemental rule to allow use of emission factors and estimation, the emission measurement phase would be many months longer given the hard to test sources and sheer number of emission points necessitating an even longer compliance extension.

2. *Risk assessment:* The final rule provides two primary options for mills to make their low-risk demonstration – use of the look-up tables in Appendix B or conducting a site-specific risk assessment using either screening level data and assumptions or more detailed methods and information. Based on a partial survey of the industry, it appears that less than 5% of all the affected sources can use the look-up tables. Thus, the vast majority of mills that plan to qualify for the low-risk subcategory (up to 50% of all mills) will engage in a more rigorous and time-consuming process. In fact, in many cases, mills will undertake preliminary assessments to determine what HAPs from what process units are "driving" the risk estimates and how close the projected risks are to the criteria outlined in the rule. Given that mills want to be very sure that they are in compliance with the criteria, many will conduct additional refinements or consider various risk mitigation strategies if there is any possibility that the source may exceed the risk criteria. Developing an effective solution to meet the criteria may involve one or a combination of the following tasks:

---

[5] Many mills started putting together their HAP testing plans soon after the rule was published so the past year has been quite busy as mills evaluate their options and plan their compliance strategies.

- Installing add-on controls,
- Installing new stacks or extending existing stacks,
- Procuring additional property,
- Obtaining meteorological data for mills in rural locations where data is absent or lacking,
- Verifying compliance with the State's air toxic regulations.

The risk assessment phase could last between three and eight months for a mill if everything proceeds according to schedule. However, when looking across several mills the task takes longer as a company has to dovetail efforts with multiple facilities. Some iterations in risk assessment process may necessitate further testing which would add additional time. Thus the overall time from start for finish could be closer to a year or even more in certain cases.

3. *Capital acquisition:* As with any organization, it takes time for a company to get approval for major capital investments since capital is scarce and there are many opportunities for its use geared to productivity improvements or product development. On average, it will usually take a year to move through the company budgeting process, since that process generally only occurs once a year; even though some expenditures for MACT have been anticipated for some time in longer range planning, the actual commitments and timing still need to be finalized before the money is spent. To allow time for construction to be completed by the MACT compliance date, selection of the compliance option must be decided early in the process and capital allocated for any construction projects. The capital allocation can occur concurrently with the emission testing and risk assessment, but must be complete to begin risk mitigation activities described below. Moreover, in some circumstances where the amount of capital is significant or it is unclear whether the investment will lead to compliance, more time may be necessary for management review. Because of the uncertainties in the low-risk emissions estimating and testing requirements pending finalization of this supplemental rule, many companies have been extremely cautious in proceeding very far along their capital authorization processes for improvements needed to implement the low-risk approach.

4. *Risk mitigation*: If a low-risk demonstration is dependant upon making material changes at a mill, then sufficient time is needed to implement those changes. Several stages must be completed sequentially, including selecting the contractor, designing and engineering the project, securing environmental construction permits, if necessary, fabrication of equipment, delivery and installation of equipment, and an equipment shakedown period, including the time necessary to "debug" the equipment. Overall, this process can take from eight months for a simple project to over a year for more complex projects. Many mills are considering some form of risk mitigation to qualify as low-risk sources.

5. *Contractor availability:* Mills want to be confident that their compliance plans are carried out competently and this requires competent contractors at several stages of the project. Many companies, especially small and mid-size companies, rely almost exclusively on

contractors to carry out tasks that are either done infrequently or require a special expertise. For the low-risk subcategory qualification, a mill may need contractors to carry out emission testing, risk assessment, risk mitigation design and installation, development of the low-risk demonstration and ultimately submittal of necessary information to the state permitting agency. In many cases, qualified contractors are in short supply because they are being sought or used by other companies or for projects outside the context of PCWP MACT. AF&PA pointed out in its comments to EPA on the proposed rule[6], for example, that there were few vendors capable of designing, fabricating and installing regenerative thermal oxidizers for wood products facilities, given suppliers going out of business, consolidation, and limited manufacturing capacities, so there would be fierce competition for those resources. In addition, few contractors from some of the broader disciplines like emission testing and risk assessment, have experience at wood product facilities. This can either limit the pool of qualified professionals who can bid for a project at a mill or lead to more time to accomplish the specified task given the learning curve. Finally, the recent damage from Hurricane Katrina will create a significant demand on qualified contractors and construction materials needed to rebuild the affected areas over the next several years. Ultimately, contractor availability and quality is one more aspect of the process that mills and companies have to manage that takes additional time. AF&PA has not included a specific time period for contractor availability in its request for additional time, but instead assumed perhaps optimistically that the additional time is covered in the testing, risk assessment, and risk mitigation phases (see #1, 2 and 4 above)

6. *Multiple projects*: For larger companies with multiple wood product mills, there is an added complexity of coordinating multiple assessments of compliance alternatives and implementation with limited corporate staff for oversight. As a result, it takes longer – between four and eight months – to handle these complexities and assure company-wide standards of quality. One company estimates that it takes an extra two months for each mill the company owns, up to a maximum of a year to do the extra coordination. For example, corporate staff frequently oversee emission testing at each of the mills and can only be in one place at a time. There are also a limited number of qualified testing crews which need to be staffed for multiple projects. Careful scheduling is required to cover the many sites across wide geographic areas. Unforeseen delays such as equipment failures or bad weather can throw off the best laid plans and result in delays as activities are rescheduled. Company staff are also having to determine compliance with other regulations like Boiler MACT that are happening in the same timeframe, further stretching the capabilities.

7. *EPA approval*: Ultimately, it is insufficient for a mill to just submit its low-risk demonstration to EPA. The mill must also get affirmative approval. However, in the interest of adequate review, the rule does not place any time limitations on EPA to act,

---

6 *See* Comments Of The American Forest & Paper Association, Inc.: National Emission Standards For Hazardous Air Pollutants; Plywood And Composite Wood Products; Proposed Rule 68 Fed. Reg. 1276 (January 9, 2003), pp. 176-181 (March 7, 2003) (Docket # A-98-44, #IV-D-27).

and so AF&PA has been working with EPA to facilitate their LRD reviews. This effort involves developing a "template" for mills to use so EPA will have all the necessary information to review in a format that is easy to understand. Although development of a template will hopefully reduce delays caused by incomplete information in a demonstration that will need to be resubmitted, EPA's review timelines remain uncertain and iterative reviews are anticipated in some cases for this approval process. AF&PA conservatively estimates two to four months for EPA review given the potential for a hundred or more mills to seek LRD; many mills providing demonstrations on or very near the submittal deadline.

8. *Title V preparation*: Finally, a mill needs to put together the necessary information and parameters that will demonstrate it will remain in the low-risk subcategory. Under the current rule, this activity, although not a prerequisite for being approved, must also be squeezed into the timeline between the low-risk submittal and the compliance date. It will take a mill on average 1 to 2 months to prepare, review and submit the application to its state, especially given the need to consider any feedback from EPA on what parameters to include in the submission.

If the compliance demonstration also has to occur before the compliance deadline then even more time will be needed – another 2-3 months at a minimum.[7] However, we believe additional time should be given *after* the compliance deadline to make the final compliance demonstration (*see* Section B below).

Thus, as we look at the overall low-risk demonstration process from the time of this rule's promulgation in early 2006 to Title V submittal (which has to occur before the compliance date), it takes between 21 and 38 months:

- 3-4 months for testing (possibly up to a year)
- 3-8 months for risk assessment (maybe a year in some cases)[8]
- 8-12 months for any risk mitigation activities[9]
- 4-8+ months for larger companies with multiple facilities
- no time allotted for delays due to contractor availability or capital acquisition
- 2-4 months for EPA review of the LRD and
- 1-2 months to prepare and submit the Title V application
- 21-38 month total (18-32 months to get to the point of LRD submittal)

---

7 If the compliance demonstration has to occur before the submittal of the LRD (as opposed to the compliance deadline) then it places an even greater time pressure on sources.

8 An additional 6 – 12 months could be required to develop appropriate meteorological data for some rural sources, particularly on the West coast.

9 This assumes that the year for capital acquisition (see #3 above) occurs concurrent with the risk assessment and risk mitigation activities and that no special contracting challenges (see #5 above) occur; otherwise, even more time will be needed.

Assuming each task falls at the mid-point of these ranges (and no other complications arise), the total time to prepare a low-risk demonstration is estimated to be 30 months, which would make the ultimate compliance date August 2008. Many facilities would need 25 months for submittal of the low-risk demonstration to EPA, making the new LRD submittal date March 2008.

In sum, with respect to whether EPA should extend the compliance deadline for low-risk sources, AF&PA believes EPA should extend the compliance deadline until August 1, 2008 for sources planning on using the low-risk demonstration. If EPA decides to limit extensions to the circumstances just described, sources that clearly cannot qualify as low-risk would still need to meet the October 1, 2007 deadline. The extensions would not adversely affect air quality or public health because the low-risk sources by definition do not cause any harm and the unforeseeable cases of becoming subject to MACT will only involve a handful of sources.

2. Extension for All PCWP Sources

As noted at the beginning of this section, EPA also asked whether a compliance deadline extension should be considered for all PCWP sources. AF&PA believes this approach would be the most equitable and is merited given the uncertainties in timing and proposed changes to the rule as described above for the low-risk sources. Providing a general extension could allow a greater number of facilities to make use of the low-risk option because it would allow those facilities that considered the option too uncertain more time to implement the complicated tasks discussed earlier, creating a surer path to compliance. In addition, even sources planning to comply with MACT may need additional time to comply given the D.C. Circuit's recent decision invalidating the pollution control exclusion from new source review. Regenerative thermal oxidizers (the likely MACT control technology for many sources) at some plants may generate sufficient NOx to trigger new source review evaluation, which can add considerably to the time required for compliance. Also, a consideration for EPA is that an across the board extension would be administratively simpler.

B. AF&PA Supports EPA's Proposal To Extend The Deadline For Sources To Submit Their Low-Risk Demonstrations, But Also Believes That, In Certain Defined Instances, Additional Time May Be Needed

The final rule required sources to submit their low-risk demonstrations by no later than July 31, 2006. *See* 40 C.F.R. Part 63, Subpart DDDD, Appendix B, § 10(a). As EPA recognizes in the supplemental proposed rule, however, the final rule raised significant issues with respect to the emissions points for which actual test data would be required (as opposed to emissions estimation). As a result, the vast majority of wood products facilities were unable to conduct the necessary testing and, where appropriate, make changes to lower potential risks, prior to the clarifications that have been provided in the supplemental proposal. As such, EPA

has proposed to extend the low-risk submittal deadline to April 1, 2007. AF&PA strongly supports this proposal.[10]

AF&PA has conducted an informal survey of its member companies to determine when facilities believe that they will be able to complete their low-risk demonstrations, and the key factors influencing the timing of those demonstrations. Of the 108 PCWP plants that responded to the survey, 70 thought that they would have a strong possibility of qualifying for the low-risk subcategory.[11] Of those, however, 31 did not believe that they could meet the July 31, 2006 deadline for the low-risk demonstration in the final rule – most because of concerns about completing the emissions testing in light of the uncertainties that are being clarified in the supplemental proposal. Others, however, believe that their ability to meet a July 31, 2006 deadline will be jeopardized by the need to install additional control equipment or pollution prevention programs and/or because of issues related to permitting for emissions reductions efforts to meet the low-risk demonstration, or the sequencing of the engineering analysis and capital planning. Many companies had particular concerns related to coordinating activities at multiple plants. Finally, the supplemental proposal itself provides the necessary details underpinning much of what companies are doing to meet the low-risk criteria; delays in issuance of the proposal resulted in delays in commencement of testing and modeling.

Thus, AF&PA believes that extension of the low-risk submittal deadline to April 1, 2007 is critical to provide facilities that can meet the low-risk criteria sufficient time to make their low-risk demonstrations. In addition, AF&PA makes the following recommendations with respect to timing for low-risk sources, should the Agency decide not to extend the overall compliance deadline for such sources.

1. AF&PA Endorses EPA's Proposal To Allow The Use Of Preliminary Data In The Low-Risk Demonstration, But Requests Clarification As To How This Approach Would Work In Practice

EPA has proposed to allow sources to submit a "preliminary" low-risk demonstration that is based on proposed physical changes to the plant that have not yet been completed or verified by stack testing.[12] Sources would be required to verify that the changes in fact resulted in the anticipated emissions levels through stack testing prior to final confirmation that they indeed meet the low-risk criteria. AF&PA strongly supports this approach both to address some of the timing concerns identified above and as a means of ensuring that sources are not required to undertake expensive facility changes if EPA does not approve their low-risk demonstrations.

---

10 As discussed in Section A, March 1, 2008 would be far better than April 1, 2007; however April 2007 is far superior to July 31, 2006.

11 This survey did not attempt to be fully representative of the industry; AF&PA does not know at this time the percentage of PCWP facilities that may be able to meet the criteria for the low-risk subcategory.

12 70 Fed. Reg. at 44022.

The proposal is silent, however, on exactly when the source must have completed the facility changes and conducted its final testing to verify that it in fact meets the low-risk criteria. As discussed above, the timing for completing the low-risk demonstrations is challenging (although EPA's proposed extension of the low-risk demonstration deadline to April 1, 2007, will be highly beneficial in this regard). More than 20 facilities in AF&PAs informal survey indicated that the time needed for installation of additional emission control equipment, pollution prevention activities or other physical changes would impede their ability to meet the deadline.

To address these timing issues, AF&PA believes that EPA should give sources until the April 1, 2007 deadline (or later, if this deadline is extended as recommended above) to submit their low-risk demonstrations that are based on proposed physical changes at the plant leading to meeting the low-risk thresholds. The low-risk demonstration would specify all of the facility parameters necessary to ensure compliance with the low-risk criteria, including certification that the facility would be in compliance with those parameters by no later than October 1, 2007. Based on this demonstration, EPA would issue its low-risk subcategory authorization and, as with most other CAA programs, the facility would be responsible for ensuring (and certifying) that it complies with all applicable requirements.

As noted above, all sources would be required to have completed those proposed physical changes by the compliance deadline. AF&PA also believes that for sources making physical changes at the plant to achieve a low-risk demonstration, confirmatory emissions testing should be required by the date on which performance testing for MACT compliance is due in the final rule (i.e., 180 days after the compliance deadline, *see* 40 C.F.R. § 63.2261(a)). This complementary timing makes sense because physical changes to meet the low-risk criteria and physical changes to meet a control option, a production based compliance option or the emissions averaging option follow similar engineering and capital planning timelines. AF&PA recognizes that this confirmatory testing would occur after the compliance deadline – but that is no different from EPA's standard practice under Title III, where sources must have installed any requisite controls by the compliance deadline but then have an additional six months in which to do the testing to confirm that they in fact meet the applicable standards. Of course, in this situation, the source bears the risk that the performance testing will not demonstrate compliance, and runs the risk of enforcement action for noncompliance during the period between the compliance deadline and the date the testing was conducted. So too here, sources that complete the necessary control installations and/or other physical changes (*e.g.* production process changes for pollution prevention programs) just before the compliance deadline assume the risk that those programs will not have been as effective as they predicted, such that the performance testing does not demonstrate compliance with the low-risk criteria as they had anticipated.

Under this approach, sources have every incentive to complete their facility changes and conduct their confirmatory testing prior to the compliance deadline – and, indeed, prior to the low-risk demonstration deadline – as doing so ensures that they meet the low-risk criteria prior to the compliance deadline. But sources that are unable to complete their facility changes until just before the compliance deadline still have an opportunity to be included in the low-risk subcategory – *if* they choose to bear the risk that their performance testing may not come out as they anticipated, and that they may be subject to enforcement as a result. AF&PA

believes that it is completely appropriate – and consistent with prior Title III precedent – to adopt this timing option, while making it clear and explicit that the burden of demonstrating compliance and the attendant risk of enforcement lies entirely with the source that does not conduct its testing until after the compliance deadline.

The rule currently requires that the results of emission testing, including process operating parameters established during the tests, are to be included in the Title V Permit following EPA's approval of the LRD. If facilities are able to complete emission testing to verify emission rates represented in the low-risk demonstration, including doing so after the compliance deadline as proposed above, EPA would need to change the requirements to become part of the low-risk source category. Changing the low-risk category requirements would be necessary to address how test results, and the process operating parameters derived during emission tests, are to be included in the Title V permit application. To accomplish this, AF&PA suggests that facilities can propose emission limits in their Title V applications, and that facilities could propose which process parameters would be limited, with the limits set as a result of the most recent emission test. Many Title V permits have language similar to the provision that operating limits would be based on the results of the most recent emission test, provided that the emissions still met the low-risk criteria. (Also, please review comments in Section V. F, *Testing and operating flexibility*, of these comments when addressing operating limits.)

EPA also has requested comment on allowing sources to submit a preliminary low-risk demonstration that relies on emissions factors – even for sources that are not making any changes that would affect emissions rates.[13] This preliminary demonstration would be submitted prior to the low-risk demonstration deadline and EPA would evaluate its approvability prior to the source conducting confirmatory emissions testing. AF&PA supports this approach. To be useful both for EPA and sources, however, AF&PA believes that it is critical that EPA provide the source with a meaningful response to the preliminary demonstration, *i.e.*, confirmation from EPA that the source has used an acceptable methodology and that, if emissions testing comes out as anticipated by the source, the source will meet the low-risk criteria and its demonstration will be approved. AF&PA recognizes that this would not be "final agency action" until the confirmatory testing is complete and EPA has issued its final approval. Nonetheless, the initial feedback from EPA with respect to the approvability of the demonstration needs to be authoritative and definitive for this approach to be worthwhile, considering that all of the details of the low-risk demonstration will have been submitted and reviewed – pending the testing confirmation.

AF&PA believes that preliminary low-risk demonstrations will be beneficial both for sources and for EPA. From EPA's perspective, it can receive low-risk demonstrations earlier than it otherwise would have done; this will enable the Agency to spread its review work, rather than having a major review crunch in the six month period leading up to the compliance deadline. For those sources submitting early demonstrations, EPA can essentially complete its evaluative work early – subject only to the confirmatory emissions testing. From the source's perspective, it can receive early confirmation that it does, in fact, qualify as low-risk so long as

---

[13] 70 Fed. Reg. at 44022.

the emissions testing comes out as anticipated. The source receives the certainty of knowing that its approach is approvable prior to expending the resources necessary for emissions testing. Should the low-risk demonstration not be approved, this approach also allows facilities more time to amend their demonstration or prepare for alternative compliance options.

As with the approach outlined above for sources needing to make changes to qualify as low-risk, AF&PA believes that it is reasonable for the confirmatory emissions testing to occur after the low-risk demonstration deadline. These sources should have until the MACT compliance deadline to complete their testing (or longer as described previously if they are also making physical changes). As with sources making changes to achieve the low-risk criteria, sources that defer their emissions testing bear the risk that that testing will not demonstrate that they qualify as low-risk, and any potential enforcement that may result.

In either of the above cases where deferred testing is allowed, the current requirement that a facility obtain changes to its Title V permit to include parameters maintaining the low-risk subcategory after receiving approval of the low-risk submittal and before the compliance date, is unworkable. To address this, AF&PA requests that a facility be allowed to submit a Title V application incorporating the emission rate and process limitations stated in the low-risk demonstration concurrent with or soon after the submittal of the low-risk demonstration to EPA. States would not be allowed to issue the Title V permit revision prior to the facility receiving approval of the low-risk demonstration. AF&PA notes that in the proposed rule EPA is addressing another timing issue related to state approval/finalization of Title V permit changes, which AF&PA comments in Section V. C. The Title V timing solution described for the deferred testing cases should be compatible with these suggested changes.

2. EPA Should Consider Adopting A "Conditional Approval" For Certain Low-Risk Demonstrations

As EPA is aware, the primary "risk drivers" for PCWP facilities are acrolein (for non-cancer risks) and acetaldehyde (for cancer risks). Indeed, AF&PA's informal survey suggests that a number of additional facilities may be able to meet the low-risk criteria with even modest changes to the health benchmarks for these two chemicals.

In its comments on the proposed rule, AF&PA provided extensive information demonstrating that the acrolein RfC was unduly conservative and, indeed, was inconsistent with the conclusions of other governmental organizations such as California's Office of Environmental Health Hazard Assessment and Health Canada.[14] AF&PA also commented that, although not as well-studied as formaldehyde, acetaldehyde is similar to formaldehyde structurally and toxicologically, and is expected to be similar mechanistically – but the available data show that acetaldehyde is approximately an order of magnitude less potent a carcinogen as compared to formaldehyde.[15] Accordingly, AF&PA urged EPA to revise its acrolein health benchmark to be more comparable to that of California and Health Canada, and to revise its

---

[14] *See* AF&PA, Wood MACT Comments, pp. 96-98.

[15] *Id.* at 85-88.

acetaldehyde unit risk factor ("URF") in the same way that it should revise the formaldehyde URF.

Although EPA agreed that the formaldehyde URF in IRIS did not reflect the available science and should be revised, the Agency did not believe that there was sufficient data to warrant modifying the acetaldehyde or acrolein health benchmarks. As a result, shortly after issuance of the final rule, AF&PA and its member companies committed significant resources to commission state-of-the-art scientific research from CIIT on both acetaldehyde and acrolein. That research is being done on as expedited a schedule as possible, and AF&PA anticipates that the results are highly likely to justify an increase in the health benchmarks for acrolein and/or acetaldehyde – although the magnitude of any such increase obviously cannot be known until the studies are completed. As part of its research effort, CIIT will recommend whether and to what degree the acrolein and acetaldehyde health benchmarks should change based on the new studies. In addition, the research contract specifies that CIIT will provide a report to EPA every six months detailing the progress of the studies and any preliminary results.

Significantly, however, the final results of the studies are not anticipated until approximately February of 2007 – a mere two months before the low-risk demonstrations are due in April. Although most facilities will have been able to complete their emissions testing by this date – and, based on the results of its the studies, CIIT will recommend the appropriate revisions (if any) to the existing health benchmarks – the problem lies in the fact that EPA itself will have insufficient time to review the new studies and determine what it believes to be the appropriate health benchmarks for acrolein and acetaldehyde by the April deadline. For this reason, AF&PA believes that EPA should include in the final supplemental rule a "conditional approval" reserved solely for facilities that will meet the low-risk criteria only if there is a change in the acrolein and/or acetaldehyde health benchmarks. Although this option would be available to any PCWP facility, AF&PA anticipates that it would be used only by those few that – based on the existing health benchmarks – are close to, but cannot quite meet, the low-risk criteria.

Under this approach, these facilities should be offered the opportunity to demonstrate, by the low-risk demonstration deadline, that they meet the low-risk criteria if there is a specified change in the health benchmark (as recommended by CIIT). Based on its review of the modeling demonstration, EPA would "conditionally approve" the facility as qualifying for the low-risk subcategory if, based on its initial review of the data, it agreed that the recommended change to the health benchmark is scientifically supportable. Final approval, however, would be dependent upon EPA's ultimate evaluation of the acrolein and acetaldehyde studies. If EPA confirms the change in the health benchmark, then the "conditional approval" would be converted to a final approval. If EPA subsequently determines that the health benchmark(s) should not be modified – or should not be modified as much as the facility recommended – such that the facility does *not* qualify for the low-risk subcategory, then EPA would revoke the conditional approval and the facility would be required to comply with MACT on an expedited basis.[16]

---

[16] AF&PA believes that under this scenario, it would be appropriate for EPA to grant the one-year extension for installation of control equipment provided for under Section 112(i)(3)(B). As noted

Another approach that would be appropriate for some facilities would be to have a conditional low-risk approval with enforceable commitments. For example, a facility that is fairly close to, but does not quite meet, the low-risk criteria with the existing health benchmarks could submit a conditional low-risk demonstration that commits to one set of controls to meet the low-risk demonstration if the acrolein health benchmark increases by a factor of 10, for example, and another more stringent set of controls if the acrolein health benchmark increases by a factor of 3, and comply with MACT if the acrolein health benchmark does not increase at all. The low-risk demonstration would commit to installation of the requisite controls by a date certain from when EPA informs the facility of its final determination with respect to the health benchmark.

EPA also has requested comment on whether it should extend the MACT compliance deadline for sources whose low-risk demonstrations are disapproved (or for all PCWP sources).[17] In addition to the reasons described above in Section II.A of these comments, it may also be appropriate to consider extending the compliance deadline for all sources to enable EPA to avoid the potential complexities associated with a conditional approval approach (or, indeed, with respect to all of the issues discussed above relating to preliminary data, etc.). For example, rather than issuing a conditional approval for sources dependent upon the new CIIT studies to demonstrate low-risk, EPA could instead extend the compliance deadline by a year (or perhaps more) to give itself time to finish its review of those studies. Should EPA ultimately conclude that the CIIT studies did not warrant a change in the health benchmark, such that a facility's low-risk demonstration was rejected, an additional extension might be necessary to enable the source to comply with MACT. (Alternatively, EPA could simply issue a blanket extension of the compliance deadline, rather than applying the extension only to specific sources.)[18]

Because of the timing difficulties associated with review of the new data on acrolein and acetaldehyde, AF&PA believes EPA should consider these and other flexible approaches to the low-risk demonstration for that limited subset of sources that may be able to meet the low-risk criteria with even modest changes to the health benchmarks for these two chemicals.

AF&PA recognizes that, to some degree, the approach being recommended here is "backwards" from the approach that is typically used. That is, science is always subject to change and EPA usually will not "conditionally" adopt new science pending peer review and confirmation of the accuracy of the new science. But the PCWP MACT context is somewhat unique. As noted above, acrolein and acetaldehyde are the "risk drivers" for most PCWP

---

above, a one-year extension may be particularly necessary in light of the recent D.C. Circuit decision invalidating the pollution control exclusion from new source review. There may be circumstances in which installation of regenerative thermal oxidizers may require new source review evaluation.

17 70 Fed. Reg. at 44022.

18 As noted above, because the supplemental rule will have its own effective date, the Section 112(i)(3)(A) compliance "clock" could re-start after promulgation of the final supplemental rule, enabling EPA to give any amount of time up to three years from the effective date of that rule for compliance.

facilities and, as demonstrated in AF&PA's comments on the proposed rule, the health benchmarks for both compounds are highly conservative – so conservative, in fact, that AF&PA and its member companies considered it worthwhile to commission extensive new scientific studies to update and improve the existing body of scientific knowledge.

Yet without the conditional approval approach (or a compliance deadline extension), much of the benefit of the low-risk subcategory approach and these new studies will be lost because facilities will be required to install costly (and, in some cases, environmentally counter-productive) control devices to comply with MACT. If EPA later concludes that the acrolein or acetaldehyde health benchmarks *should* be revised, such that these facilities qualify for the low-risk subcategory, they will have expended the resources to install controls unnecessarily, and will be unable to recoup the costs. For example, the installed cost of a regenerative thermal oxidizer ranges from $2M to $8M. In contrast, if EPA adopts a conditional approval approach (or a deadline extension), the source can install any necessary controls on an expedited schedule following the Agency's review of the new studies – assuming that review results in the source not qualifying for the low-risk subcategory. In other words, under the conditional approval approach, an erroneous decision can be corrected (*i.e.,* an incorrect determination that the source was low-risk and was not required to install controls) whereas under the more typical approach, an erroneous decision cannot be corrected (*i.e.,* an incorrect determination that the source was *not* low-risk, resulting in the source installing controls that ultimately turn out not to be necessary).

For example, consider a hypothetical particleboard facility that barely fails to meet the low-risk subcategory criteria solely because of low-level acrolein emissions from a direct-fired dryer drying hardwoods. In order to comply with the MACT requirements, the dryer can meet the production-based compliance option. However, because the facility as a whole is now subject to MACT, the facility also must install an RTO on its particleboard press. Although HAP emissions from press are low, they also contain ammonia from thermal degradation of urea in the board. The RTO would achieve little in the way of HAP removal or reduced health risk, but would produce large amounts of NOx, both from conversion of ammonia to NOx as well as NOx from the burners used to operate the RTO. Therefore, the overriding environmental impact of the RTO is to increase ozone emissions. This facility could clearly demonstrate installation of an RTO would be more harmful than good and it should not have to install and operate an RTO. With the higher RfC for acrolein supported by the CIIT research, the facility would not need to install the RTO. However, unless EPA implements a conditional approval approach, the source will have been required to expend significant capital resources to install – and utilize significant amounts of natural gas to operate – an RTO that does not provide any meaningful environmental benefits (and, indeed, increases pollution).

For these reasons, AF&PA believes that a conditional approval approach is warranted for that subset of sources for which a change in the acrolein and/or acetaldehyde health benchmark would result in qualifying for the low-risk subcategory. Under this approach, however, sources that receive "conditional approval" would be on notice that following EPA's final review, they could be removed from the low-risk subcategory – and if that happens, they would be required to install controls on an expedited basis. Alternatively, EPA could issue a compliance extension – either for all sources, or for those sources for which a change in the