



# Regulatory Plan and Semiannual Regulatory Agenda

U.S. Environmental Protection Agency  
EPA Semiannual Regulatory Agenda - Fall 2007  
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Part One - Cover, Note, and Regulatory Plan (pages 1 - 41 of 399 pages)

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FALL 2007

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*“America is shifting to a “green culture” – where all of our citizens understand that environmental responsibility is everyone’s responsibility. By equipping Americans with environmental information, EPA is helping the public pass down a cleaner, healthier world.”*

— Administrator, Stephen L. Johnson



United States Environmental Protection Agency  
Office of Policy, Economics and Innovation  
EPA-230-Z-07-002

Fall 2007 Artwork Theme:  
“Whatever you Do, Wherever You Go, Think Before You Throw!”  
Cover art created by Christy Beltz, age 12  
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## Editor's Note

For over two decades, the Environmental Protection Agency (EPA) has created a Regulatory Agenda book combining both the Agenda and Plan in one document. This book also provides indexes that help users identify certain classifications of regulations. The book is divided into these three sections:

- The Regulatory Plan
- The Semiannual Regulatory Agenda
- Indexes

We have assembled the three sections from multiple sources, which is why the format is different in the different sections and as a result, this printed version is longer than previous editions.

The Regulatory Plan section is presented in the same format as it was printed in the Federal Register (FR) on December 10, 2007. The Plan describes the most important regulatory and deregulatory actions that we expect to issue in proposed or final form during the upcoming fiscal year. EPA publishes a Regulatory Plan every Fall as part of the government-wide Unified Regulatory Plan.

The Semiannual Regulatory Agenda section presents the Agenda in the same format as it is posted on Regulations.gov. (To go to the Agenda on Regulations.gov, select Site Features >> Regulatory Agenda >> EPA). Because the federal government is moving to an online, searchable version of the Regulatory Agenda, the entire Fall 2007 Agenda was not printed in the FR so we could not use the FR version to produce this section. The only actions printed in the FR were those actions that may have a significant economic impact on a substantial number of small entities and actions that have been selected for periodic review under Section 610 of the Regulatory Flexibility Act.

Detailed information about the Semiannual Regulatory Agenda is located in the Agenda preamble at the start of this section of the book. In general, we publish a Semiannual Regulatory Agenda every Spring and Fall as part of the government-wide Unified Agenda of Regulatory and Deregulatory Actions. The Agenda lists all regulatory activities found in the Regulatory Plan but also includes a broader universe of regulatory activities under development or review. It describes all regulations and certain major policy documents that we are working on this year. We generally do not include minor amendments or actions such as changes of address or delegations of authority. There is no legal significance to the omission of an item from the Agenda.

The final section of this book is the Indexes section. We provide them here so that specific stakeholders -- small businesses, small non-profits, and state, local, and Tribal governments -- can more easily determine which regulatory activities relate to them.

We hope you find this book a useful tool. If you have any specific questions or comments about a particular action, please get in touch with the Agency contact listed in each Agenda entry. If you have general questions about the Semiannual Regulatory Agenda please contact: Phil Schwartz ([schwartz.philip@epa.gov](mailto:schwartz.philip@epa.gov); 202-564-6564) or Caryn Muellerleile ([muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov); 202-564-2855); if you have general questions about the Regulatory Plan contact Caryn Muellerleile.



**PLAN**

ENVIRONMENTAL PROTECTION AGENCY

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## ENVIRONMENTAL PROTECTION AGENCY (EPA)

### Statement of Priorities

#### OVERVIEW

The United States Environmental Protection Agency (EPA) is the primary Federal agency responsible for safeguarding the quality of the natural environment and protecting human health from deleterious pollutants. Since 1970, EPA, together with its partners and stakeholders, has been delivering a cleaner, healthier environment to the public. EPA's achievements, from regulating auto emissions to banning the use of DDT, from cleaning up toxic waste to protecting the ozone layer, and from increasing recycling to revitalizing inner-city brownfields, have resulted in cleaner air, purer water, and better protected land.

The Agency uses three guiding principles to govern its work to maintain the strongest level of environmental protection:

- *Results and Accountability.* EPA is committed to being a good steward of our environment and a good steward of America's tax dollars. To provide the public with the environmental results it expects and deserves, we must operate as efficiently and effectively as possible. Accountability for results is a key component of the President's Management Agenda, designed to make government citizen-centered, results-oriented, and market-based.
- *Innovation and Collaboration.* Our progress depends both on our ability and continued commitment to identify and use innovative tools, approaches, and solutions to address environmental problems and to engage extensively with our partners, stakeholders, and the public. Under each of our goals, we are working to promote a sense of environmental stewardship and a shared responsibility for addressing today's challenges.
- *Best Available Science.* EPA needs the best scientific information available to anticipate potential environmental threats, evaluate risks, identify solutions, and develop protective standards. Sound science helps us ask the right questions, assess information, and characterize problems clearly to inform Agency decision makers.

EPA applies these principles as it works with its Federal, State, tribal, and

local government partners to advance the mission of protecting human health and the environment. As a result of these collaborations, tremendous progress has been made in protecting and restoring the Nation's air, water, and land:

- EPA is advancing clean, renewable fuels and clean air through a renewable fuel standard which encourages the use of renewable fuels produced from American crops.
- By the end of FY 2006, more than 2,500 polluted waters identified by states in 2000 were restored or found to be meeting water quality standards.
- EPA continues to commit to Brownfields redevelopment via strong public-private partnerships and innovative and creative solutions. By encouraging cleanup and redevelopment of America's abandoned and contaminated waste sites, the Brownfields Program has leveraged more than \$8.2 billion in private investment, more than 37,500 jobs, and more than 8,300 properties assessed for potential redevelopment.
- EPA has a leading role in homeland security by supporting the protection of critical water infrastructure and coordinating development of national capabilities and strategies to address chemical, biological, and radiological contamination from a terrorist event. In FY 2006, EPA received emergency response plans for 100 percent of all large and medium community drinking water systems that conducted vulnerability assessments; launched a pilot water contamination warning system; developed short-term exposure limits and established health effects guidelines for exposure to hazardous chemicals or a terrorist incident; and updated the National Response Plan in light of lessons learned from hurricanes Katrina and Rita.

EPA continues to accelerate its pace of environmental protection while maintaining the Nation's economic competitiveness. To that end, the Agency has a number of regulatory goals in order to meet the challenge while demonstrating progress consistent with its principles of results and accountability, innovation and collaboration, and the use of the best available science. Using these three principles as the foundation of its activity, EPA is sharpening focus on achieving measurable environmental results on the following five strategic goals:

#### Clean Air and Global Climate Change

While EPA has made tremendous progress toward achieving clean, healthy air that is safe to breathe, air pollution continues to be a great problem. The average adult breathes more than 3000 gallons of air every day, and children breathe more air per pound of body weight. Air pollutants, such as those that form urban smog can remain in the environment for long periods of time and can be carried by the wind hundreds of miles from their origin. Millions of people live in areas where urban smog, very small particles, and toxic pollutants may pose serious health concerns.

EPA's programs will allow the Nation to make substantial progress in protecting human health and ecosystems from air pollution. By 2011, virtually all of the country will have put in place controls to meet current air quality standards. New motor vehicles, including trucks and buses, will be 75 to 95 percent cleaner than they were in 2003. Power plant emissions will be reduced by approximately 40 percent from 2003 levels. Taken together, these programs, when fully implemented, may prevent tens of thousands of premature deaths and hospitalizations, and may prevent millions of lost work and school days each year. These national programs will be supplemented by local control strategies designed to ensure that the air quality standards are achieved and maintained.

EPA also works to address climate change. Since the beginning of the industrial revolution, concentrations of several greenhouse gases (particularly carbon dioxide) have increased substantially. EPA is currently working with other Federal Agencies to implement the President's 20 in 10 program, to reduce gasoline consumption up to 20 percent in the next ten years.

#### Clean and Safe Water

EPA's "Clean and Safe Water" goal defines the improvements that EPA expects to see in the quality of the Nation's drinking water and of surface waters over the next 5 years. These goals include improving compliance with drinking water standards, maintaining safe water quality at public beaches, restoring more than 2,000 polluted waterbodies, and improving the health of coastal waters.

In an effort to address the Nation's aging water infrastructure system, EPA is developing and implementing more innovative, market-based infrastructure financing tools for States, tribes, and

communities. These initiatives will increase and accelerate investment in water infrastructure and offer greater flexibility and cost-effectiveness to provide clean and safe water for every American. Through technology, innovation, and collaboration, EPA makes better use of its resources to help the nation's water and wastewater systems be highly efficient and to move infrastructure toward greater sustainability for many years to come.

#### **Land Preservation and Restoration**

EPA's land preservation and restoration goal represents the need for managing waste, conserving and recovering the value of wastes, preventing releases, responding to emergencies, and cleaning up contaminated land. Uncontrolled wastes can cause acute illness or chronic disease and can threaten healthy ecosystems.

Over the next 5 years, EPA will establish or update approved controls to prevent dangerous releases at approximately 500 hazardous waste treatment, storage, and disposal facilities and also will address 2 long-standing tribal waste management concerns: increasing the number of tribes covered by integrated waste management plans and cleaning up open dumps.

To reduce and control the risks posed by accidental and intentional releases of harmful substances, EPA plans to maintain a high level of readiness to respond to emergencies, lead or oversee the response at more than 1,600 hazardous waste removals and reduce by 25 percent the number of gallons of oil spilled by facilities subject to Facility Response Plan regulations relative to previous levels. EPA and its partners, and responsible parties will remediate contaminated land, reduce risk to the public, and enable communities to return properties to beneficial reuse. We will also apply leading-edge scientific research to improve our capability to assess conditions and determine relative risks posed by contamination at hazardous waste sites.

#### **Healthy Communities and Ecosystems**

With a mix of regulatory programs and partnership approaches the Agency achieves results in ways that are efficient, innovative and sustainable. EPA continues to work collaboratively with other nations and international organizations to identify, develop, and implement policy options to address global environmental issues of mutual

concern. Following this, EPA strives to build a community's capability to make decisions that affect the environment.

EPA's efforts to share information and provide assistance offers the tools needed to effectively address the myriad aspects of planned development or redevelopment. These contributions are tailored to circumstances spanning the issues of sensitive communities and international cooperation. In a similar manner, EPA's ecosystem protection programs encompass a wide range of approaches that address specific at-risk regional areas, such as large waterbodies. EPA also works with partners to protect larger categories of threatened systems, such as estuaries and wetlands. In cooperation with the U.S. Army Corps of Engineers, EPA will assure "no net loss" of wetlands.

Science guides EPA's identification and treatment of emerging issues and advances our understanding of long-standing human health and environmental challenges. EPA's research is typically crosscutting, multidisciplinary, and at the cutting edge of environmental science; reflects the dynamic nature of science; and brings scientific rigor to the characterization of uncertainty and risk.

#### **Compliance and Environmental Stewardship**

EPA ensures that government, business, and the public comply with Federal laws and regulations by monitoring compliance and taking enforcement actions that result in reduced pollution and improved environmental management practices. To accelerate the Nation's environmental protection efforts, EPA works to prevent pollution at the source, to advance other forms of environmental stewardship, and to employ the tools of innovation and collaboration.

Effective compliance assistance and strong, consistent enforcement are critical to achieving the human health and environmental benefits expected from the country's environmental laws. EPA monitors compliance patterns and trends and focuses on priority problem areas identified in consultation with States, tribes, and other partners. The Agency supports the regulated community by assisting regulated entities in understanding environmental requirements, helping them identify cost-effective compliance options and strategies, providing incentives for compliance.

EPA promotes the principles of responsible environmental stewardship, sustainability, and accountability to

achieve its strategic goals. Collaborating closely with other Federal agencies, States, and tribes, the Agency identifies and promotes innovations that assist businesses and communities in improving their environmental performance. EPA works to improve and encourage pollution prevention and sustainable practices, helping businesses and communities move beyond compliance and become partners in protecting our national resources and improving the environment and our citizens' health.

#### **Timeliness of Regulatory Actions**

Completing actions on time or ahead of schedule means EPA keeps its commitments, improves the quality of decisions, and the public and environment benefit from EPA's key actions sooner. EPA is focusing management attention on several dozen key actions and tracking their adherence to an agreed-to schedule for the completion of a standard set of development milestones leading to promulgation of rules or finalization of other types of actions. Actions that are completed on time or early are used by EPA as potential exemplars of best practices; program offices that achieve timely completion of actions are encouraged to share their success stories and lessons learned. Actions that are off-track are identified early and corrective steps are taken to expedite their completion.

#### **Aggregate Costs and Benefits**

Per the amendments to EO 12866, we are providing a combined aggregate estimate of costs and benefits of regulations included in the Regulatory Plan. Any aggregate estimate of total costs and benefits must be highly qualified. Problems with aggregation arise due to differing baselines, data gaps, and inconsistencies in methodology and type of regulatory costs and benefits considered. The aggregate estimates presented combine annualized and annual numbers. Cost savings are treated as benefits. Dollars were converted to 2001 using the GDP deflator. The ranges presented below do not reflect the full range of uncertainty in the benefit and cost estimates for these rules.

It is critical to note that the aggregate estimates omit important benefits and costs that cannot be monetized. For example, the estimates leave out many health and welfare benefits, such as ecosystem functions, visibility, avoided cases of chronic respiratory damage, hypertension, and coronary heart disease, among many others. In



addition, for many of the rules in the Plan, we were unable to estimate costs and benefits at this time because the range of policy options under consideration is wide and varied.

The monetized aggregate estimates provided below reflect the following rules in the Regulatory Plan: (1) Monetized cost and benefit information was provided for: Review of NAAQS for Ozone, Control of Emissions from New Locomotives and New Marine Diesel Engines, Control of Emissions from Nonroad Spark-Ignition Engines, Expanding the Comparable Fuels Exclusion under RCRA, Lead-Based Paint Activities; Amendments for Renovation, Repair and Remodeling; (2) Monetized cost information (but no monetized benefits) was provided for: Endocrine Disruptor Screening Program; Implementing the Screening and Testing Phase, Test Rule; Certain High Production Volume (HPV) Chemicals, Pesticides; Data Requirements for Antimicrobials, and Final Revisions to the Effluent Limitations Guidelines and Standards for CAFOS; (3) Monetized benefit information (but no monetized costs) was provided for: Definition of Solid Waste Revisions, Revisions to the SPCC Final Rule, Regulation of Oil-Bearing Hazardous Secondary Materials from the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas, Hazardous Waste Management System.

Aggregate annual monetized benefits range from \$5 billion to \$104 billion (benefit estimates reflect the full suite of standards under consideration for the ozone NAAQS). With the exception of the ozone NAAQS rule, we do not have sufficient information to provide a range for the aggregate cost estimates. For this reason, we are reporting the ozone cost range separate from the other rules. The annualized monetized costs for the ozone NAAQS rule range from \$3.5 billion to \$70 billion (cost estimates reflect the full suite of standards under consideration for the ozone NAAQS.) Aggregate annual monetized costs for all other rules are estimated to be \$1 billion. This estimate does not reflect the uncertainty in the cost estimates, as noted above.

#### Rules Expected to Affect Small Entities

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. A number of rules included in this Plan might be of

particular interest to small businesses including

- Control of Emissions from Spark-Ignition Engines and Fuel Systems from Marine Vessels and Small Equipment (2060-AM34), and
- Lead-Based Paint Activities; Amendments for Renovation, Repair and Painting (2070-AC83).

For a more extensive list of rules affecting small businesses, please see appendices B and C to the Regulatory Agenda which is available at <http://www.epa.gov/opei/orpm.html#agenda>.

EPA's Regulatory Plan is an important element of the Agency's strategy for achieving environmental results within the framework described above. The Agency's regulatory program includes several efforts that will reduce the burden placed on small businesses while ensuring the integrity of the environment. Many of these have been nominated for Agency action through the public nomination process initiated by the Office of Management and Budget (OMB) in 2001, 2002, and 2004 and many of these have been completed. Taken as a whole, the Agency's Regulatory Plan will ensure that the Nation continues to achieve improvements in environmental quality while minimizing burden to States and the regulated community.

#### HIGHLIGHTS OF EPA'S REGULATORY PLAN

##### *Office of Air and Radiation*

In 2007, a top priority for EPA is the implementation of a recent Presidential Executive Order to reduce gasoline consumption and greenhouse gas emissions from motor vehicles and other types of engines. To this end, the Office of Air and Radiation (OAR) is working with other Federal agencies to develop the rules needed to carry out this Executive Order. These regulations are intended to give effect to the President's State-of-the-Union proposal to reduce gasoline consumption by 20 percent over the next 10 years by increasing the supply of alternative fuels and making motor vehicles more energy efficient. Another important and ongoing OAR regulatory priority is to protect public health and the environment from the harmful effects of fine particulate matter and ozone, the two air pollutants that persist widely in the Nation's air in amounts that exceed Clean Air Act health standards. Exposure to these pollutants is associated with numerous harmful effects on human health, including

respiratory problems, heart and lung disease, and premature death. These pollutants also degrade visibility, an effect of particular concern in national parks and other scenic areas. In addition to ozone and particulate pollution, OAR is continuing to address toxic air pollution by controlling toxic emissions from both stationary sources and mobile sources such as cars and trucks. OAR is also working to increase the effectiveness and efficiency of its permitting and monitoring programs, which are among the main mechanisms through which clean-air protections are implemented. Finally, OAR is revising previously issued safety standards for nuclear-waste storage in response to a court decision. These efforts are described briefly below.

On May 14, 2007, President Bush issued Executive Order entitled "Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines." OAR is working with other Federal agencies to implement this Executive Order by developing regulations to reduce gasoline consumption and greenhouse gas emissions from motor vehicles. These regulations will use as a starting point the President's State-of-the-Union proposal to reduce gasoline consumption by 20 percent over the next 10 years. By increasing the supply of alternative fuels and making motor vehicles more energy efficient, this effort will serve to establish rules giving effect to the President's proposal.

To help control ozone and particulate pollution, OAR is developing additional rules as part of its program to reduce emissions from mobile sources. These rules will require additional emission reductions from certain marine engines, locomotives, and small equipment. These rules will enhance the overall mobile-source control program that has already set stringent standards for most categories of vehicles, engines, and their fuels.

OAR also continues to assess new scientific information that underlies the National Ambient Air Quality Standards (NAAQS). In July, EPA proposed a rule revising the existing NAAQS for ozone, and will promulgate a final rule early in 2008. A rulemaking addressing standards for lead is also underway, with an advance notice of proposed rulemaking due for publication in December.

EPA continues to address toxic air pollution under authority of the Clean Air Act Amendments of 1990. The

largest part of this effort is the "Maximum Achievable Control Technology" (MACT) program, which is now well into its second phase consisting of evaluation of the effectiveness of work done so far, assessment of the need for additional controls, and assessment of advances in control technology. In this second phase, EPA will combine the remaining MACT source categories requiring residual risk and technology reviews into several groups to help meet statutory dates, raise and resolve programmatic issues more effectively, minimize resources by using available data and focusing on high risk sources, and provide consistent review and analysis. Among the rulemakings currently underway is the Risk and Technology Review Phase II, Group 2, which addresses 21 source categories including aerospace manufacturing, oil and natural-gas production, and production of polymers and resins.

Since many air quality programs are administered through permitting and monitoring programs, OAR continues to work toward improving these programs to increase efficiency and reduce regulatory burden. Currently, OAR is continuing to develop rulemakings to streamline and improve its New Source Review (NSR) permitting program. This effort will clarify the circumstances under which companies must obtain construction permits before building new facilities or significantly modifying existing facilities. These revisions will provide more regulatory certainty by clarifying compliance requirements, and will also make the program easier to administer while maintaining its environmental benefits. In developing these NSR rule revisions, OAR is drawing upon many years of intense involvement with major stakeholders, who have helped shape a suite of reforms that are expected to both improve the environmental effectiveness of these programs and make them easier to comply with. OAR is also developing rulemakings to clarify and better define the kinds of monitoring required in Federal and State operating permit programs, and to clarify how to determine the potential emissions from various types of sources.

EPA also expects to complete a rulemaking amending the radiation standards governing the development of the Yucca Mountain site in Nevada, the Nation's designated geologic repository for spent nuclear fuel and high-level radioactive waste. These standards were initially issued in 2001 and were partially remanded by a Federal court in

2004. To address the remand, EPA must reassess the time frame for compliance in light of the National Academy's recommendation that compliance must be addressed at the time of peak dose, which may be as long as several hundred thousand years into the future.

#### *Office of Prevention, Pesticides, and Toxic Substances*

The primary goal of EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) is to prevent and reduce pesticide and industrial chemical risks to humans, communities and ecosystems. OPPTS employs a mix of regulatory and non-regulatory methods to achieve this goal. During the past fiscal year, OPPTS proposed and finalized a number of significant regulatory actions that are briefly highlighted below. For more information about these regulatory actions, as well as information about our other programs and activities, please visit our Web site at [www.epa.gov/oppts](http://www.epa.gov/oppts). Looking forward to the coming fiscal year, OPPTS expects to issue several significant regulatory actions that are also highlighted below.

In working to meet OPPTS's goal, EPA thoroughly evaluates pesticides to ensure that they will meet Federal safety standards to protect human health and the environment before they can be marketed and used in the United States. EPA uses data submitted by pesticide producers to form the bases for the pesticide risk assessments and decisions as to whether pesticides meet safety standards. The Agency has kept pace with the evolving scientific understanding of pesticide risks by requiring the submission of the data needed on a case-by-case basis and OPPTS updated its registration data requirements for conventional, biochemical, and microbial pesticides in 2007. As part of this continuing effort to update and/or establish pesticide data requirements, OPPTS expects to issue two proposed rules in 2008: One would update the data requirements for antimicrobial pesticides in 40 CFR Part 158; the other would establish data requirements for plant-incorporated protectant (PIP) pesticides in 40 CFR Part 174.

In order to better protect human health and the environment, and to update and strengthen the pesticide worker safety programs, OPPTS expects to propose changes to the Code of Federal Regulations (CFR) for certifying the competency of pesticide applicators to apply pesticides safely in late 2008. Many changes in State programs have

occurred since the initial applicator certification regulations were promulgated in the 1970s. Today, many States' programs go beyond the current Federal regulations in training and certifying pesticide applicators. The Agency anticipates revisions that will broaden the scope of the certification program for occupational pesticide applicators, and strengthen the demonstration of competency as a requirement of certification. In conjunction with the applicator certification regulation enhancements, OPPTS will also propose enhancements to the agricultural worker protection regulation in a separate but related regulatory action to strengthen the elements of hazard communication and pesticide worker safety training.

Evidence suggests that environmental exposure to man-made chemicals that mimic hormones (endocrine disruptors) might cause adverse health effects in human and wildlife populations. The Food Quality Protection Act directed EPA to develop a chemical screening program (the Endocrine Disruptor Screening Program, EDSP), using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. OPPTS is implementing recommendations from a scientific advisory committee, which was established to advise EPA on the EDSP, by developing and validating test systems for determining whether a chemical might have effects similar to those produced by naturally occurring hormones. As part of this program EPA is also developing a draft framework for procedures and processes to use when implementing the screening and testing phase of the EDSP, and developed an initial list of chemicals for which testing will be required. In 2008, EPA anticipates finalizing the procedures and the list of chemicals for initial screening. The screening and testing phase of the program is expected to commence in 2008.

In 2008, EPA will continue its work towards the Administration goal of eliminating childhood lead poisoning as a national health concern by 2010 by implementing a program to address lead-based paint hazards associated with renovation, repair and painting activities. The program will be composed of a combination of approaches including regulations, and education and outreach that will include elements specifically designed for industry and consumers. Industry outreach will include dissemination of

information regarding the regulation, lead-safe work practices, and training opportunities. Consumer outreach will be designed to expand consumer awareness, and create demand for the use of lead-safe work practices. EPA plans to finalize and begin implementation of the Renovation, Repair and Painting Program rule in 2008. The regulation is intended to minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair, and painting activities. The regulation would require contractors conducting renovation, repair and painting activities in most target housing and child occupied facilities to be trained, certified, and to follow work practice standards designed to minimize the creation of lead hazards.

EPA continues to implement the voluntary HPV Challenge Program, a collaborative partnership between EPA and industry stakeholders, to develop health and safety screening information on sponsored high production volume chemicals. To complement this voluntary effort, OPPTS expects to propose a second test rule under the Toxic Substances Control Act (TSCA) in early 2008. This rule will require testing for a number of HPV chemicals that were not sponsored as part of the voluntary HPV Challenge Program in order to develop critical information about the environmental fate and potential hazards of those chemicals. When combined with exposure and use information obtained under the Inventory Update Rule (IUR), the Agency will be in a position to evaluate potential health and environmental risks, and take appropriate actions, as necessary. In 2007 and continuing in 2008, EPA will begin to evaluate the HPV data and develop hazard screening/risk characterizations on the HPV chemicals. These Hazard/Risk Characterizations will be posted to the High Production Volume Information System (HPVIS) website as they are completed. EPA will also begin to assess lower-volume existing chemicals. These activities will help us identify needed next steps, including regulatory and voluntary measures, to obtain more detailed toxicity or exposure information, identify safer substitutes, or identify other risk mitigation steps, if necessary. Because of the head start provided by the HPV Challenge information and Inventory Update Rule reporting, this approach will result in risk management and testing decisions on HPV chemicals in the next several years. Additionally, EPA is committed to considering any relevant data

generated by other countries or regions (e.g., Canada's Chemical Management Plan or the EU's REACH legislation) which would further inform our regulatory decisions.

In July of 2007, EPA issued for public comment draft documents regarding the design of a voluntary Nanoscale Materials Stewardship Program (NMSP) under TSCA. The NMSP will complement and support EPA's new and existing chemical programs under TSCA and will help provide a firmer scientific foundation for regulatory decisions by encouraging the development of key scientific information and contribute to an improved understanding of risk management practices for nanoscale chemical substances (nanoscale materials). EPA held a public meeting on the NMSP on August 2007, and in September 2007, the Agency held a public scientific peer consultation on material characterization of nanoscale materials as well as a conference on the pollution prevention benefits of nanotechnology. If information from the NMSP or other information indicates potential new uses of existing chemicals that may result in new exposures or to fill information gaps, EPA may issue a significant new use rule or section 8 reporting rule under TSCA.

#### *Office of Solid Waste and Emergency Response*

The Office of Solid Waste and Emergency Response (OSWER) contributes to the Agency's overall mission of protecting public health and the environment by focusing on the safe management of wastes; preparing for, preventing and responding to chemical and oil spills, accidents, and emergencies; enhancing homeland security; and cleaning up contaminated property and making it available for reuse. EPA carries out our mission in partnership with other Federal agencies, States, tribes, local governments, communities, nongovernmental organizations, and the private sector. To further our mission, OSWER has identified several regulatory priorities for the upcoming fiscal year that will promote stewardship and resource conservation and focus regulatory efforts on risk reduction and statutory compliance.

EPA is seeking to further amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the burden imposed on the regulated community for complying with these SPCC requirements, while maintaining

protection of human health and the environment.

Specifically, on October 1, 2007, EPA proposed amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule at 40 CFR part 112. With these proposed changes, EPA intends to provide clarity, tailor, and streamline requirements as appropriate in order to encourage greater compliance with the SPCC regulations. These amendments are intended to exempt certain containers from the SPCC requirements; clarify the general secondary containment requirements; provide streamlined requirements for a subset qualified facilities; increase flexibility in the security requirements and flexibility in the use of industry standards to comply with integrity testing requirements; provide additional flexibility in meeting the facility diagram requirements; clarify the flexibility provided by the definition of "facility;" and streamline a number of requirements for oil production facilities.

The "definition of solid waste" rule determines which hazardous secondary materials that are recycled are regulated under the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations and which are not. Many hazardous secondary materials that are or could be reclaimed as part of the recycling process are regulated as hazardous wastes. This can discourage recycling of the wastes, due to requirements for permits (which trigger corrective action), manifests, and the other requirements imposed by the Subtitle C hazardous waste regulations. EPA is seeking innovative approaches that will increase the safe recycling of hazardous waste, while still ensuring that these materials are properly handled. In its supplemental proposal, EPA is proposing to remove unnecessary regulatory controls over certain recycling practices; EPA expects to make it easier to safely recycle hazardous secondary material. Exclusions are proposed for materials that are generated and reclaimed under the control of the generator; materials that are generated and transferred to another person or company for reclamation under specific conditions; and materials that EPA deems nonwaste through a case-by-case petition process. If the exclusions are promulgated as proposed and are adopted by all the states, EPA expects this action to result in \$107 million in average annual cost savings.

EPA is considering revising the RCRA hazardous regulations to exclude from

being a solid waste any oil-bearing hazardous secondary materials that are generated by the petroleum refining industry if such materials are destined to be processed in a gasification system at the petroleum refinery and used in the manufacture of synthesis gas. This rule promotes increased energy efficiency, by allowing oil-bearing hazardous secondary materials to be used as a source of energy, while reducing the volume of hazardous waste that would otherwise be treated and land disposed. With an estimated savings between \$46.4 million and \$48.7 million in net social benefits per year, the final rule takes a significant step forward for the environment and for energy self-sufficiency.

The comparable fuels program currently allows specific industrial wastes to be excluded from RCRA hazardous waste requirements when they are used as a fuel and do not contain hazardous constituent levels exceeding those in a typical benchmark fuel that facilities could otherwise use as a fuel. EPA is considering promulgating a rule that would expand those hazardous wastes that could be used safely for their energy value without the expense of a RCRA permit, to promote the use of these wastes as a renewable domestic source of energy and reduce our use of fossil fuels. This rule will promote safe energy recovery and remove unnecessary costs.

The Agency plans to propose revisions to the treatment standards for the disposal of spent hydrotreating and hydrorefining catalysts. EPA is focusing on removing disincentives to the recycling of spent hydrotreating and hydrorefining catalysts, which would create more incentives to metals recovery, over disposal.

The Office of Management and Budget's Reports to Congress on the Costs and Benefits of Regulations for 2001, 2002 and 2004 included reform nominations for the Agency to consider. The following rulemakings mentioned above support reform nominations: (1) Expanding the Comparable Fuels Exclusion under RCRA, (2) Definition of Solid Waste Revisions, (3) Revisions to Recycling Requirements for Spent Hydrotreating and Hydroprocessing Catalysts, and (4) Revisions to the SPCC. In addition, two additional rulemakings under development also pertain to the reform nominations: (1) Streamlining Laboratory Waste Management in Academic and Research Laboratories and (2) Management of Cement Kiln Dust (a by-product of the cement manufacturing process.) For the former

rule, the Agency proposed a set of alternative standards that are more tailored to the way laboratories operate. For the latter rule, the Agency proposed a comprehensive set of standards for the management of cement kiln dust.

#### *Office of Water*

EPA's Office of Water's primary goals are to ensure that drinking water is safe; restore and maintain oceans, watersheds, and their aquatic ecosystems to protect human health; support economic and recreational activities; and provide healthy habitat for fish, plants, and wildlife. In order to meet these goals, EPA has established a number of regulatory priorities for the coming year. They include actions affecting National Pollutant Discharge Elimination System permit requirements and drinking water.

EPA is planning to publish four actions affecting National Pollutant Discharge Elimination System (NPDES) permitting requirements in FY 2007. The first is a rule addressing the NPDES permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) in response to the order issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). The final rule responds to the court order while furthering the statutory goal of restoring and maintaining the Nation's water quality and effectively ensuring that CAFOs properly manage manure generated by their operations. A second action is the Water Transfers rulemaking. EPA plans to finalize the rule that addresses the question of whether the NPDES permitting program under Section 402 of the Clean Water Act (CWA) is applicable to water control facilities that merely convey or connect navigable waters. A third action that EPA plans to issue is a policy regarding NPDES permit requirements for peak wet weather diversions at publicly owned treatment works (POTW) treatment plants serving separate sanitary sewer collection systems. Lastly, EPA began development of NPDES permitting framework under the CWA for the discharge of pollutants incidental to the normal operation of vessels (e.g., bilgewater, deck runoff, graywater). Development of NPDES permits is necessary in light of a lawsuit in the U.S. District Court for the Northern District Court of California in which the Court ruled that EPA's regulation excluding discharges incidental to the normal operation of a vessel from

NPDES permitting exceeded the Agency's authority under the CWA.

#### EPA

#### PRERULE STAGE

#### 130. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR LEAD

##### **Priority:**

Economically Significant. Major under 5 USC 801.

##### **Legal Authority:**

42 USC 7408; 42 USC 7409

##### **CFR Citation:**

40 CFR 50

##### **Legal Deadline:**

NPRM, Judicial, May 1, 2008, As per 5/14/2005 order.

Final, Judicial, September 1, 2008, As per 5/14/2005 order.

##### **Abstract:**

On October 5, 1978 the EPA promulgated primary and secondary NAAQS for lead under section 109 of the Act (43 FR 46258). Both primary and secondary standards were set at a level of 1.5 µg/m<sup>3</sup> as a quarterly average (maximum arithmetic mean averaged over a calendar quarter). Subsequent to this initial standard-setting, the Clean Air Act requires that the standard be reviewed periodically. The last such review occurred during the period 1986-1990. For that review, an Air Quality Criteria Document (AQCD) was completed in 1986 with a supplement in 1990. Based on information contained in the AQCD, an EPA Staff Paper and Exposure Assessment were prepared. Following the completion of these documents, the agency did not propose any revisions to the 1978 Pb NAAQS. The current review of the Pb air-quality criteria was initiated in November 2004 by EPA's National Center for Environmental Assessment (NCEA) with a general call for information published in the Federal Register. In January 2005, NCEA released a work plan for the review and revision of the Pb AQCD. Workshops were held to provide author feedback on a developing draft of the AQCD in August 2005. The draft AQCD was released December 1, 2005. The EPA Office of Air Quality Planning and Standards prepared a draft Staff Paper for the Administrator, which included

an initial evaluation of the key studies and scientific information contained in the AQCD and additional preliminary technical analyses. The AQCD and draft Staff Paper were reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public. An ANPRM will be published outlining the results of the final risk assessment and giving consideration to the policy assessment. As the lead NAAQS review is completed, the Administrator's proposal to reaffirm or revise the lead NAAQS will be published with a request for public comment. Input received during the public comment period will be considered in the Administrator's final decision.

#### Statement of Need:

As established in the Clean Air Act, the national ambient air quality standards for lead are to be reviewed every five years.

#### Summary of Legal Basis:

Section 109 of the Clean Air Act (42 USC 7409) directs the Administrator to propose and promulgate "primary" and "secondary" national ambient air quality standards for pollutants identified under Section 108 (the "criteria" pollutants). The "primary" standards are established for the protection of public health, while the "secondary" standards are to protect against public welfare or ecosystem effects.

#### Alternatives:

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for lead are whether to reaffirm or revise the existing standards.

#### Anticipated Costs and Benefits:

Cost and benefit estimates are being developed with the proposal.

#### Risks:

The current national ambient air quality standards for lead are intended to protect against public health risks. During the course of this review, a risk assessment will be conducted to evaluate health risks associated with the retention or revision of the lead standards. Welfare effects will also be reviewed in relation to retention or revision of the current standard.

#### Timetable:

Action	Date	FR Cite
ANPRM	12/00/07	
NPRM	04/00/08	
Final Action	09/00/08	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

Undetermined

#### Additional Information:

SAN No. 5059;

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RIN: 2060-AN83

#### EPA

#### 131. ENDOCRINE DISRUPTOR SCREENING PROGRAM (EDSP); IMPLEMENTING THE SCREENING AND TESTING PHASE

#### Priority:

Other Significant

#### Legal Authority:

15 USC 2603 "TSCA"; 21 USC 346(a) "FFDCA"; 42 USC 300(a)(17) "SDWA"; 7 USC 136 "FIFRA"

#### CFR Citation:

None

#### Legal Deadline:

None

#### Abstract:

Section 408(p) of the Federal Food, Drug, and Cosmetic Act, as amended by the 1996 Food Quality Protection Act, directs EPA to establish and implement a program whereby industry will be required to screen and test all pesticide chemicals to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator

may designate. The requirements of Section 408(p) were implemented through the creation of the Endocrine Disruptor Screening Program (EDSP) in 1998. The EDSP has the following three components that are proceeding simultaneously: 1) developing and validating assays; 2) setting chemical testing priorities; and 3) establishing 408(p) testing orders and related data procedures. A Federal Advisory Committee Act committee has provided advice to the EDSP on assay development and validation. For chemical testing priorities, the approach to selecting the first 50-100 chemicals was finalized in September 2005 (70 FR 56449) and EPA implemented that approach. EPA published a draft list of 73 pesticide active ingredients and high production volume (HPV) pesticide inert chemicals for initial screening in June 2007 (72 FR 33486). EPA intends to commence Tier 1 screening of the first group of pesticide chemicals by issuing test orders under FFDCA section 408(p) to chemical companies identified as the manufacturer or processor of the identified chemicals, including the pesticide registrant. EPA is developing a draft implementation policy that will describe the procedures that EPA will use to issue orders, the procedures that order recipients would use to respond to the order, how data protection and compensation will be addressed in the test orders, and other related procedures or policies.

#### Statement of Need:

The Endocrine Disruptor Screening Program Implementation of the Screening and Testing Phase fulfills the statutory direction and authority to screen pesticide chemicals and drinking water contaminants for their potential to disrupt the endocrine system and adversely affect human health and wildlife.

#### Summary of Legal Basis:

The screening and testing phase of the Endocrine Disruptor Screening Program (EDSP) potentially will encompass a broad range of types of chemicals, including pesticide chemicals, TSCA chemicals, chemicals that may be found in sources of drinking water, chemicals that may have an effect that is cumulative to the effect of a pesticide chemical, chemicals that are both pesticide chemicals and TSCA chemicals, and other chemicals that are combinations of these types of chemicals. As discussed in the Proposed Statement of Policy, EPA has a number of authorities at its disposal

to require testing of these types of chemicals. The Federal Food, Drug, and Cosmetics Act (FFDCA) section 408(p) provides EPA authority to require testing of all pesticide chemicals and any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if EPA determines that a substantial population may be exposed to the substance. 21 U.S.C. 346a)(p). Likewise, the Safe Drinking Water Act (SDWA) provides EPA with authority to require testing of any substance that may be found in sources of drinking water if EPA determines that a substantial population may be exposed to the substance. 42 USC sec 300j-17. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides EPA with authority to require testing of pesticides if EPA determines that additional data are required to maintain in effect an existing registration. 7 USC sec 136a(c)(2)(B). The Toxic Substances Control Act (TSCA) provides authority for EPA to require testing of TSCA chemicals, provided that it makes certain hazard and/or exposure findings. 15 USC sec 2603. In addition, EPA has authority to issue consent orders to require testing when interested parties agree on an acceptable testing program. 51 FR 23706 (June 30, 1986).

#### Alternatives:

A federal role is mandated under cited authority. There is no alternative to the role of the Federal government on this issue to ensure that pesticides, commercial chemicals and contaminants are screened and tested for endocrine disruption potential. A limited amount of testing may be conducted voluntarily but this will fall far short of the systematic screening which is necessary to protect public health and the environment and ensure the public that all important substances have been adequately evaluated.

#### Anticipated Costs and Benefits:

It is too early to project the costs and benefits of this program accurately. However, a preliminary rough estimate by industry indicated a cost of \$200,000 per chemical. It is also too early to quantify the benefits of this program quantitatively. The goal of the program is to reduce the risks identified below.

#### Risks:

Evidence is continuing to mount that wildlife and humans may be at risk from exposure to chemicals operating through an endocrine mediated

pathway. Epidemiological studies on the associations between chemical exposures and adverse endocrine changes continue to evaluate this problem in humans. Wildlife effects have been more thoroughly documented. Abnormalities in birds, marine mammals, fish, amphibians, alligators, and shellfish have been documented in the U.S., Europe, Japan, Canada, and Australia which have been linked to specific chemical exposures. Evidence is sufficient for the U.S. to proceed on a two track strategy: Research on the basic science regarding endocrine disruption and screening with validated assays to identify which chemicals are capable of interacting with the endocrine system. The combination of research and test data submitted in this program will enable EPA to take action to reduce risks.

#### Timetable:

Action	Date	FR Cite
Draft Procedures	11/00/07	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

Federal

#### Additional Information:

SAN No. 4728; EPA publication information: Notice; Split from RIN 2070-AD26. In August 2000, the Agency submitted the required Status Report to Congress. In March 2002, the Agency submitted the requested status report to Congress on the Endocrine Disruptor Methods Validation subcommittee under the National Advisory Council on Environmental Policy and Technology.

#### URL For More Information:

<http://www.epa.gov/scipoly/ospendo/index.htm>

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RIN: 2070-AD61

#### EPA

#### 132. NANOSCALE MATERIALS UNDER TSCA

#### Priority:

Other Significant

#### Legal Authority:

15 USC 2601et seq

#### CFR Citation:

Not yet determined

#### Legal Deadline:

None

#### Abstract:

Nanoscale materials are chemical substances containing structures on the scale of approximately 1 to 100 nanometers, and may have different molecular organizations and properties than the same chemical substances on a larger scale. Because such materials may have novel properties and present novel issues, evaluating and managing health and environmental risks of nanoscale materials poses a new challenge. Under the Toxic Substances Control Act, EPA has the authority to require the development of data necessary for the assessment of chemical substances and mixtures from persons that manufacture or process them when statutory findings concerning (1) production volume and exposure/entry into the environment or (2) potential hazard can be made, and to prevent and eliminate unreasonable risk of injury to human health and environment from chemical substances and mixtures. The Office of Pollution Prevention and Toxics (OPPT) is establishing a voluntary program to

assemble existing data and information from manufacturers and processors of certain nanoscale materials. With this assembled material, EPA will take appropriate steps to protect human health and the environment from unreasonable risk from these substances. In October 2006 EPA announced a collaborative process to design a nanoscale material stewardship program inviting 500 organizations and agencies to participate. On July 12, 2007, the Agency published a document that describes specific elements regarding a voluntary stewardship program for nanoscale materials, a proposed information collection request, and a paper that describes determining the TSCA inventory status of nanoscale materials. In addition, EPA conducted a public meeting on August 2 to receive oral comments on the stewardship program and the published documents. A notice announcing the stewardship program including final versions of any documents is scheduled to be published in February, 2008.

**Statement of Need:**

There is evolving understanding of a new technology with regard to health and safety implications from exposure to nanoscale materials. This is also true in the areas of environmental fate, efficacy of exposure mitigation practices, etc. Therefore, at present the lack of information leads to challenges in the assessment of and decision-making on nanoscale materials.

**Summary of Legal Basis:**

Under TSCA, EPA has the authority to require the development of data adequate for the assessment of chemical substances and mixtures from persons that manufacture or process them, and to prevent and eliminate unreasonable risk of injury to human health and environment from chemical substances and mixtures.

**Alternatives:**

The stewardship program is an effective yet flexible alternative to traditional regulatory approaches.

**Anticipated Costs and Benefits:**

To be determined.

**Risks:**

EPA will use information from the stewardship program to inform appropriate steps and future framework to protect human health and the environment from unreasonable risk.

**Timetable:**

Action	Date	FR Cite
Notice: TSCA Inventory Status	07/12/07	72 FR 38083
Notice: Final Program Announcement	02/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 5058; EPA publication information: Notice: TSCA Inventory Status - <http://www.epa.gov/fedrgstr/EPA-TOX/2007/July/Day-12/t13558.htm>; EPA Docket information: EPA-HQ-OPPT-2004-0122

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**RIN:** 2070-AJ30

**EPA**

**PROPOSED RULE STAGE**

**133. IMPLEMENTING PERIODIC MONITORING IN FEDERAL AND STATE OPERATING PERMIT PROGRAMS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7401 et seq

**CFR Citation:**

40 CFR 70.6(c)(1); 40 CFR 71.6(c)(1); 40 CFR 64

**Legal Deadline:**

None

**Abstract:**

This rule would revise the Compliance Assurance Monitoring rule (40 CFR part 64) to be implemented through the operating permits rule (40 CFR parts 70 and 71) to define when periodic monitoring for monitoring stationary source compliance must be created, and to include specific criteria that periodic monitoring must meet. This rule satisfies our 4-step strategy announced in the final Umbrella Monitoring Rule (published January 22, 2004) to address monitoring inadequacies. The four steps were: 1) To clarify the role of title V permits in monitoring [Umbrella Monitoring Rule]; 2) to provide guidance for improved monitoring in PM-Fine SIP's; 3) to take comment on correction of inadequate monitoring provisions in underlying rules; and 4) to provide guidance on periodic monitoring. We have completed the RIA data collection and most of the analyses, and are beginning review with OPEI and an economic sub-work group.

**Statement of Need:**

The "periodic monitoring" rules, 40 CFR 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), require that "[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each title V permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§70.6(a)(3)(i)(B) and §71.6(a)(3)(i)(B)]." Sections 70.6(c)(1) and 71.6(c)(1), called the umbrella monitoring rule, require that each title V permit contain, "[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." On January 22, 2004 (69 Federal Register

3202), EPA announced that the Agency has determined that the correct interpretation of §§ 70.6(c)(1) and 71.6(c)(1) is that these sections do not provide a basis for requiring or authorizing review and enhancement of existing monitoring in title V permits independent of any review and enhancement as may be required under the periodic monitoring rules, the CAM rule (40 CFR part 64)(62 FR 54900, October 22, 1997) where it applies, and other applicable requirements under the Act.<sup>11</sup> This action is to publish a separate proposed rule to address what monitoring constitutes periodic monitoring under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) and what types of monitoring should be created under these provisions. The intended effect of the rule revisions in this proposal is to focus case-by-case reviews on those applicable requirements for which we can identify potential gaps in the existing monitoring provisions.

#### Summary of Legal Basis:

Section 502(b)(2) of the Act requires EPA to promulgate regulations establishing minimum requirements for operating permit programs, including “[m]onitoring and reporting requirements.” 42 U.S.C. § 7661a(b)(2). Second, section 504(b) authorizes EPA to prescribe “procedures and methods” for monitoring “by rule.” 42 U.S.C. § 7661c(b). Section 504(b) provides: “The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. . . .” Other provisions of title V refer to the monitoring required in individual operating permits. Section 504(c) of the Act, which contains the most detailed statutory language concerning monitoring, requires that “[e]ach [title V permit] shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(c). Section 504(c) further specifies that “[s]uch monitoring and reporting requirements shall conform to any applicable regulation under [section 504(b)]. . . .” Section 504(a) more generally requires that “[e]ach [title V permit] shall include enforceable emission limitations and standards, . . . and such other conditions as are necessary to

assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661c(a).

#### Alternatives:

Some existing monitoring required under applicable requirements could be improved and will be addressed in connection with both the upcoming PM<sub>2.5</sub> implementation rulemaking and by improving monitoring in certain federal rules or monitoring in SIP rules not addressed in connection with the PM<sub>2.5</sub> implementation guidance or rulemaking over a longer time frame.

#### Anticipated Costs and Benefits:

We are assessing the benefits associated with improved monitoring including the reduction in source owner response time to potential excess emissions problems. Such reduced response time to take corrective action that will be required by the rule will result in measurable emissions reductions that will be balanced against the cost of increased equipment, data collection, and recordkeeping costs. We estimate the total costs of the rule to be more than \$100 million.

#### Risks:

There are no environmental and health risks associated with implementing this monitoring rule; the underlying rules with emissions limits address those risks for each subject source category. The effect of the monitoring resulting from this rule will be to reduce the occurrence of excess emissions episodes that raise such risks.

#### Timetable:

Action	Date	FR Cite
NPRM	12/00/07	

#### Regulatory Flexibility Analysis Required:

Undetermined

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

Federal, Local, State, Tribal

#### Additional Information:

SAN No. 4699.2; Split from RIN 2060-AK29.

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RIN: 2060-AN00

#### EPA

### 134. REVISIONS TO THE DEFINITION OF POTENTIAL TO EMIT (PTE)

#### Priority:

Other Significant

#### Legal Authority:

42 USC 7401; 42 USC 7412; 42 USC 7414; 42 USC 7416; 42 USC 7601

#### CFR Citation:

40 CFR Part 51; 40 CFR 52; 40 CFR 63; 40 CFR 70; 40 CFR 71

#### Legal Deadline:

None

#### Abstract:

This rulemaking rule would revise the definition of the term “potential to emit” (PTE) used in numerous regulations to determine the applicability of major source requirements. The regulatory amendments will address enforceability issues raised in court decisions by the D.C. Circuit regarding the types of limitations allowed to be used in a source’s PTE calculations. We plan revisions to the definitions of PTE for three major source Act programs: (1) Major New Source Review (NSR) program, (2) the section 112 program that regulates Hazardous Air Pollutants (HAPs), and (3) the title V Federal operating permits program. We also plan to amend regulations that were not part of the court cases challenging the definition of potential to emit (e.g., visibility rules and Federal operating permits program rules) in order to be consistent with other EPA regulations. In addition to addressing the issue of whether PTE limitations have to be federally enforceable, the revised definition of PTE would set forth the



specific criteria a limitation must meet to be effective. Finally, the proposal would clarify that EPA now uses the term “federally enforceable” to refer only to the ability of the Federal government or citizens to enforce the requirement in federal courts, and not to the effectiveness of PTE limits as well.

**Statement of Need:**

The proposed rulemaking responds to three court decisions issued in 1995 and 1996 that remanded EPA’s regulatory requirement that PTE limits be federally enforceable. Although the federal enforceability requirement was vacated in the Federal PSD, NSR, and title V rules, the section 112 program rules were not vacated and thus still contain the federal enforceability requirement. In the interim however, until EPA clarifies the issues related to federal enforceability of PTE limits, current EPA policy recognizes State enforceable PTE limits for purposes of avoiding section 112 and Title V requirements in many circumstances. The new regulations would respond to the court’s remands in the various cases.

**Summary of Legal Basis:**

The proposed rule responds to three court orders regarding the federal enforceability component in the definition of “potential to emit.” See *National Mining Association v. EPA* (59 F. 3d 1351, D.C. Cir. 1995), *Chemical Manufacturers Assn v. EPA*, No. 89-1514 (D.C. Cir. Sept. 15, 1995) and *Clean Air Implementation Project v. EPA*, No. 96-1224 (D.C. Cir. June 28, 1996). In those cases, the court questioned federally enforceability as a necessary criteria for effective PTE limits. The definitions of PTE in the implementing regulations for the major source programs interpret the statutory term “potential to emit” and provide a legal mechanism for sources that wish to restrain their emissions to avoid triggering major source requirements. Several provisions of the Clean Air Act (CAA or the Act) require that “major” sources be regulated more stringently than sources that are not major. A “major” source generally is defined as one that either “emits or has the potential to emit” air pollutants above a specified amount (referred to as major source thresholds). Until EPA addresses the issues and clarifies the PTE definitions, there will be some uncertainty regarding what is required for enforceability of PTE limits. Parties currently rely on EPA guidance for

determining if PTE limits are legally enforceable and effective.

**Alternatives:**

To address the court decisions EPA must either (i) remove the exclusive federal enforceability requirement or (ii) provide an explanation as to why federal enforceability enhances the effectiveness of PTE limits to such a degree that it is within reason to require federally enforceable limits. In this rulemaking, EPA will consider both options provided by the court and propose our preferred option. The proposal will specifically request comment on our preferred approach as well as any alternative options.

**Anticipated Costs and Benefits:**

The proposed rule will not impose additional costs on sources. First, PTE limits are voluntary in that the source chooses to take a PTE limit rather than meet major source requirements. Moreover, currently, sources that wish to take PTE limits must demonstrate that their restrictions are effective according to a number of existing EPA policy documents and applicable regulations, for example under minor new source review regulations and guidance. By codifying the criteria that make PTE limits effective, we will be providing additional certainty and clarity for sources wishing to obtain PTE limits. We expect that clarifying enforceability would yield benefits in terms of improved information about sources emissions and compliance. But because PTE limits generally reduce potential rather than actual emissions and since PTE limits are already in widespread use, we do not expect significant environmental impacts associated with this rule change. These regulations will impose a burden increase initially on those State and local programs that may need to revise or remove PTE definitions in their rules to make them consistent with these amendments as approved in the final rule. Thereafter, we expect a reduction in burden for all programs due to a less burdensome administrative process.

**Risks:**

There are no environmental and health risks associated with implementing the proposed amended PTE definition; the underlying rules with emissions limits address those risks for each subject source category.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Tribal

**Additional Information:**

SAN No. 5025;

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**RIN:** 2060-AN65

**EPA**

**135. RISK AND TECHNOLOGY REVIEW PHASE II GROUP 2**

**Priority:**

Other Significant

**Legal Authority:**

CAA Sections 112(f)(2), 112(d)(6)

**CFR Citation:**

00 CFR NYD

**Legal Deadline:**

None

**Abstract:**

Under CAA Section 112(d)(6) EPA is required to review MACT standards and revise them “as necessary (taking into account developments in practices, processes and control technologies)” no less frequently than every 8 years. EPA also must evaluate the MACT standards within 8 years after promulgation and promulgate standards under CAA Section 112(f)(2) if required to protect public health with an ample margin of safety. EPA will combine the remaining MACT source categories requiring residual risk and technology reviews into several groups to enable us to more closely meet statutory dates, raise and

resolve programmatic issues in one action, minimize resources by using available data and focusing on high risk sources, and provide consistent review and analysis. We will use available data including emissions from the most recent 2002 national emission inventory (NEI) and augment it with available site-specific data. This action was originally referred to as RTR Phase II and included 34 MACT standards and 50 source categories. We reduced the scope of this action and will now focus on RTR Phase II Group 2 which consists of 11 MACT standards covering 21 source categories with MACT compliance dates of 2002 and earlier. We plan to model each MACT source category to obtain inhalation risks, including cancer risk and incidence, population cancer risk, and non-cancer effects (chronic and acute). We also plan to evaluate multipathway risk associated with those source categories with significant levels of persistent and bioaccumulative HAP. We published an ANPRM in March 2007 to solicit public comments and corrections on emissions data that will be used to assess risk for these source categories. We will remodel the categories based on the updated data. EPA will then evaluate the effectiveness and cost of additional risk reduction options and make acceptability and ample-margin-of-safety determinations in accordance with Benzene NESHAP decision framework. Where the need for additional controls are identified, standards would be developed that include technology, work practice, or performance standards as amendments to the existing MACT standards.

The 11 MACT standards, the 21 source categories, and the associated NAICS codes are listed below.

Aerospace Manufacturing and Rework Facilities, 336411

Marine Tank Vessel Loading Operations, 4883

Mineral Wool Production, 32799

Natural Gas Transmission and Storage, 486210

Oil and Natural Gas Production, 211

Pharmaceuticals Production, 3254

Group I Polymers and Resins, 325212

Epichlorohydrin Elastomers Production Hypalon™ Production

Nitrile Butadiene Rubber Production

Polybutadiene Rubber Production

Styrene-Butadiene Rubber and Latex Production,

Group IV Polymers and Resins, 325211

Acrylic-Butadiene-Styrene Production

Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production

Methyl Methacrylate-Butadiene-Styrene Production

Nitrile Resins Production

Polyethylene Terephthalate Production

Polystyrene Production

Styrene-Acrylonitrile Production

Primary Aluminum Reduction Plants, 331312

Printing and Publishing Industry, 32311

Shipbuilding and Ship Repair Operations, 36611

EPA will finalize these in two groups; one group will be finalized following the schedule noted below, the other will be finalized in 2009.

#### Statement of Need:

Under CAA Section 112(d)(6) EPA is required to review MACT standards and revise them "as necessary (taking into account developments in practices, processes and control technologies)" no less frequently than every 8 years. EPA also must evaluate the MACT standards within 8 years after promulgation and promulgate standards under CAA Section 112(f)(2) if required to protect public health with an ample margin of safety.

#### Summary of Legal Basis:

Clean Air Act Sections 112(f)(2) and 112(d)(6).

#### Alternatives:

Where additional controls are identified, risk reduction alternatives will be evaluated that include technology, work practice, or performance standards. Any alternatives that are selected would be implemented as amendments to the existing MACT standards.

#### Anticipated Costs and Benefits:

For the risk reduction alternatives we will evaluate costs, emission reductions, risk reductions, various measures of cost effectiveness and where appropriate, benefits analysis. We plan to consider the added benefit of reducing emissions of criteria pollutants, including PM, and green house gas emissions. The facts underlying the risk determination will be key factors in making any subsequent technology review determination.

#### Risks:

Each MACT source category will be assessed to determine cancer and noncancer inhalation risks, environmental risks, and multipathway risks. Cancer risk will include maximum individual risk (MIR), incidence, and population risk, and non-cancer effects will include chronic and acute risks. We also plan to evaluate the multipathway risk associated with those source categories with significant levels of persistent and bioaccumulative HAP.

#### Timetable:

Action	Date	FR Cite
ANPRM	03/29/07	72 FR 14734
ANPRM; comment period extension	05/25/07	72 FR 29287
NPRM	11/00/07	
Final Action	11/00/08	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

None

#### Additional Information:

SAN No. 5093; EPA publication information: ANPRM;

#### Sectors Affected:

3364 Aerospace Product and Parts Manufacturing; 3313 Alumina and Aluminum Production and Processing; 32731 Cement Manufacturing; 3341 Computer and Peripheral Equipment Manufacturing; 32411 Petroleum Refineries; 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum); 22132 Sewage Treatment Facilities

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RIN: 2060-AN85

**EPA**

**136. • RULEMAKING TO ADDRESS GREENHOUSE GAS EMISSIONS FROM MOTOR VEHICLES**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Clean Air Act Sections 202, 206, 208, 211

**CFR Citation:**

40 CFR 86, 40 CFR 80

**Legal Deadline:**

None

**Abstract:**

This action will implement the President's recent Executive Order to address greenhouse gas emissions from motor vehicles. This regulatory effort will evaluate reductions in gas consumption and greenhouse gas emissions from motor vehicles, using as a starting point the President's proposal to reduce gasoline consumption by up to 20% over the next 10 years. By increasing the supply of alternative fuels and making motor vehicles more energy efficient, this effort will serve to establish rules giving effect to the President's proposal.

**Statement of Need:**

On May 14, 2007 President Bush signed an Executive Order requiring Federal agencies to take the first steps toward regulations to control greenhouse gas emissions (GHG) from motor vehicles and their fuels. The President also directed agencies to take steps to cut gasoline consumption and GHG from motor vehicles using his "Twenty in Ten" plan as a starting point. This plan would achieve reductions in U.S. gasoline consumption of up to 20 percent over the next 10 years. Up to a fifteen-percent reduction in petroleum-based consumption would come through the use of renewable and alternative fuels, and up to a five-percent reduction would come from increased fuel efficiency for cars and trucks. The President directed EPA, DOT, DOE, and USDA to complete this process by the end of 2008. Based on this directive, we have established a schedule to issue a notice of proposed rulemaking by the end of 2007 and a final rule by the end of October 2008.

**Summary of Legal Basis:**

On April 2, 2007, the Supreme Court ruled that the EPA must determine, under Section 202(a) of the Clean Air Act, whether greenhouse gas emissions (GHG) from new motor vehicles cause or contribute to air pollution that endangers public health or welfare. Based on that Supreme Court ruling, GHG are air pollutants under the Clean Air Act. EPA expects to address whether GHG from new motor vehicles meet the endangerment criteria in the process of proposing regulations to control GHG from new motor vehicles and their fuels. EPA is following the directions of the Presidential Executive Order in proposing such standards.

The primary authority to regulate motor vehicles to reduce their emissions falls under Section 202(a) (1) of the Clean Air Act. This provision requires that the Administrator shall by regulation prescribe standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or motor vehicle engines which in his judgment cause or contribute to air pollution and which may reasonably be anticipated to endanger public health or welfare. A regulatory action depends on an Administrator determination that the GHG emissions from new motor vehicles causes, or contributes to, air pollution which may reasonably be anticipated to endanger the public health or welfare.

In setting fuel standards, two sections of the Clean Air Act are being considered. The primary authority for regulating motor vehicle fuels and fuel additives falls under Section 211(c) where the Administrator may, on the basis of information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle where a similar endangerment finding is made. This section provides authority to address all fuels and additives, including renewable and alternative fuels. Further, the Energy Policy Act of 2005 (EPA Act 2005, Public Law 109-58) amended the Clean Air Act by adding section Section 211(o) which requires EPA to set minimum volume standards for renewable fuel use. EPA Act 2005 established the volumes of renewable fuel to be used through 2012, and established a minimum level to be used after that date which EPA can adjust upward based on consideration of certain factors. EPA is considering an

integrated compliance approach that will use both 211(c) and 211(o) authorities for the fuel-related provisions of the proposed GHG rule.

**Alternatives:**

EPA will seek comment on alternatives to approaches being developed in the proposed rulemaking.

**Anticipated Costs and Benefits:**

Cost and benefit information is being developed as the rulemaking process proceeds. Costs and benefit information can not be determined until after regulatory approaches have been proposed. Preliminary cost and benefit information will be provided when the rule is officially proposed.

**Risks:**

The risks from emissions contributing to GHG's and their impact on public health and welfare are being evaluated and will be discussed as the endangerment finding process proceeds.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/07	
Final Action	10/00/08	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5164;

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**RIN:** 2060-AO56

**EPA****137. TEST RULE; TESTING OF CERTAIN HIGH PRODUCTION VOLUME (HPV) CHEMICALS****Priority:**

Other Significant

**Legal Authority:**

15 USC 2603

**CFR Citation:**

40 CFR 790 to 799

**Legal Deadline:**

None

**Abstract:**

EPA is issuing test rules under section 4(a) of the Toxic Substances Control Act (TSCA) to require testing and recordkeeping requirements for certain high production volume (HPV) chemicals (i.e., chemicals which are manufactured (including imported) in the aggregate at more than 1 million pounds on an annual basis) that have not been sponsored under the voluntary HPV Challenge Program. Although varied based on specific data needs for the particular chemical, the data generally collected under these rules may include: acute toxicity, repeat dose toxicity, developmental and reproductive toxicity, mutagenicity, ecotoxicity, and environmental fate. The first rule proposed testing for 37 HPV chemicals with substantial worker exposure. When finalized on March 16, 2006, the number of chemicals included in the first final rule was reduced to 17 based on new information on annual production volumes, worker exposure, and commitments to the voluntary HPV Challenge Program. Subsequent test rules, including a proposed rule scheduled to be published in spring of 2008 are expected to require similar screening level testing for additional unsponsored HPV Challenge Program chemicals.

**Statement of Need:**

Prior to inception of the HPV Challenge Program, in 1998, EPA found that, of those non-polymeric organic substances produced or imported in amounts equal to or greater than 1 million pounds per year based on 1990 reporting for EPA's Inventory Update Rule (IUR), only 7 percent had a full set of publicly available internationally recognized basic health and environmental fate/effects screening test data. Of the over 2,800 HPV chemicals based on 1990 data, 43% had no publicly available basic hazard data. For the

remaining chemicals, limited amounts of the data were available. This lack of available hazard data compromised the ability of EPA and others to determine whether these HPV chemicals pose potential risks to human health or the environment, as well as the public's right-to-know about the hazards of chemicals that are found in their environment, their homes, their workplaces, and the products that they buy. On April 21, 1998, a national initiative, known as the Chemical Right-To-Know (ChemRTK) Initiative, was announced by EPA. This Initiative is designed to collect and, where needed, develop the basic screening level toxicity and fate data that are necessary to provide the information needed to assess the potential hazards/risks that may be posed by exposure to HPV chemicals. A primary component of the ChemRTK Initiative is the voluntary HPV Challenge Program, which was created in cooperation with industry, environmental groups, and other interested parties, and is designed to assemble basic screening level test data on the potential hazards and fate of HPV chemicals. Since the inception of the HPV Challenge Program in 1998, industry chemical manufacturers and importers have participated in the Challenge Program by sponsoring 2,250 chemicals with sponsorship by more than 350 companies and 100 consortia. EPA is in the process of developing hazard characterizations based on the data received to date under the Challenge Program. Data needs which remain unmet in either the voluntary HPV Challenge Program or through complementary international efforts (i.e., the OECD SIDS HPV Program and the International Council of Chemical Associations) may be addressed through rulemaking under TSCA section 4.

**Summary of Legal Basis:**

These test rules would be issued under section 4(a)(1)(B) of TSCA. Section 2(b)(1) of TSCA states that it is the policy of the United States that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture [which is defined by statute to include import] and those who process such chemical substances and mixtures[.]" To implement this policy, TSCA section 4(a) mandates that EPA require by rule that manufacturers and processors of

chemical substances and mixtures conduct testing if the Administrator finds that: (1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment, (ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or (B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture, (ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

**Alternatives:**

The strategy and overall approach that EPA is using to address data collection needs for U.S. HPV chemicals includes a voluntary component (the HPV Challenge Program), certain international efforts, and these rulemakings under TSCA. The issuance of a rulemaking is often the Agency's final mechanism for obtaining this important information.

**Anticipated Costs and Benefits:**

The potential benefits of these test rules are substantial. For those chemical substances included in these rules, EPA believes that there are insufficient data to reasonably determine or predict their effects on health or the environment. EPA believes that the internationally recognized basic health and environmental fate/effects screening testing that would be required in these rules would provide critical information needed to conduct screening level characterizations of the health and environmental hazards of these substances. This information, when combined with information about

exposure and uses, will allow the Agency and others to evaluate the potential health and environmental risks of these substances and to take appropriate follow up action. The cost of the baseline screening testing laboratory costs that would be imposed is estimated to be about \$300,000 per chemical for a full set of tests. It is unlikely, however, for a chemical to need a full set of tests, which would only occur if none of the data in question already exists.

**Risks:**

Data collected and/or developed under these test rules, when combined with information about exposure and uses, will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate follow up action.

**Timetable:**

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81658
Final Action	03/16/06	71 FR 13709
Direct Final Action; Revocation; Coke-Oven Light Oil (Coal)	12/08/06	71 FR 71058
NPRM2	03/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Additional Information:**

SAN No. 3990; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-TOX/2000/December/Day-26/t32497.htm>; EPA Docket information: EPA-HQ-OPPT-2005-0033

**Sectors Affected:**

325 Chemical Manufacturing; 32411 Petroleum Refineries

**URL For More Information:**

[www.epa.gov/opptintr/chemtest](http://www.epa.gov/opptintr/chemtest)

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**RIN:** 2070-AD16

**EPA**

**138. PESTICIDES; DATA REQUIREMENTS FOR ANTIMICROBIALS**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 136 to 136y

**CFR Citation:**

40 CFR 158 and 161

**Legal Deadline:**

None

**Abstract:**

EPA will update and revise its pesticide data requirements for antimicrobial pesticide products. The revisions will revise its existing data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for antimicrobial pesticides, including product chemistry and residue chemistry, toxicology, and environmental fate and effects.

**Statement of Need:**

The Agency is in the process of updating its data requirements for pesticides. Since the current data requirements were first published in 1984, the information needed to support the registration of a pesticide has evolved along with the expanding knowledge base of pesticide chemical technology. Over the years, revisions and updates to the data requirements have been applied on a case-by-case basis. In 2007, the Agency promulgated data requirements for conventional, and

biochemical and microbial pesticide chemicals. As part of this action, the 1984 data requirements were transferred intact to part 161 to provide continued regulatory coverage for antimicrobial pesticides until the Agency can promulgate a final regulation. This rule will update and revise the existing data requirements for antimicrobial pesticide products. These revisions build upon those previously proposed for conventional chemicals, but are tailored to the specific data needs of antimicrobial pesticides. The revisions will provide stakeholders with greater transparency and clarity to determine the data needed for an antimicrobial pesticide product without having extensive consultations with the Agency, more focused use patterns that reflect current practice, and a more efficient registration process. When the Agency promulgates the revised data requirements in part 158 subpart W, the current data requirements in part 161 will be removed.

**Summary of Legal Basis:**

7 U.S.C. 136 to 136y

**Alternatives:**

The Agency is required by its various statutory mandates to establish data requirements that support its regulatory decisions. The Agency re-evaluates those data requirements in light of scientific advances, analytical improvements, and new technology, to provide a sound scientific basis for those decisions. On a case by case basis, the Agency considers whether alternative regulatory methods, such as restrictions on use, would obviate the need for data, and explores means of introducing flexibility and clarity to reduce burdens on the regulated community. For this rule, EPA will analyze keeping the current data requirements as specified in part 161, using the data requirements promulgated for conventional chemicals, and promulgating new data requirements specifically for antimicrobials.

**Anticipated Costs and Benefits:**

The Agency is conducting an economic analysis to support the rule. Anticipated benefits include less uncertainty and clearer understanding of the actual risk, increased clarity and transparency to the regulated community, improved scientific basis for pesticide regulatory decisions, and enhanced international harmonization with less duplication of data. The increased costs of the rule are estimated

as greater than \$3 million /year for the 72 companies that hold registrations or have applied for a registration for an antimicrobial product.

**Risks:**

The revisions to the data requirements to be proposed, like the existing requirements in part 158, would require an applicant for pesticide registration to supply the Agency with information on the pesticide: composition, toxicity, potential human exposure, environmental properties and ecological effects, and, in certain cases, efficacy. This information is used to assess the human health and environmental risks associated with the product. The data that will be required by this regulation are the foundation of EPA's risk assessment for antimicrobial pesticides, and provide a sound scientific basis for any licensing decisions that impose requirements that mitigate or reduce risks. Under FIFRA, the applicant for registration must demonstrate to the Agency's satisfaction that the pesticide product will not cause "unreasonable adverse effects" to humans or to the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	07/00/08	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Additional Information:**

SAN No. 4173

**Sectors Affected:**

32519 Other Basic Organic Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

**URL For More Information:**

<http://www.epa.gov/pesticides/regulating/data.htm>

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**RIN:** 2070-AD30

**EPA**

**139. PESTICIDES; COMPETENCY STANDARDS FOR OCCUPATIONAL USERS**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 136; 7 USC 136i; 7 USC 136w

**CFR Citation:**

40 CFR 171; 40 CFR 156; 40 CFR 152

**Legal Deadline:**

None

**Abstract:**

The EPA is proposing change to federal regulations guiding the certified pesticide applicator program (40 CFR 171). Change is sought to strengthen the regulations to better protect pesticide applicators and the public and the environment from harm due to pesticide exposure. Changes may include having certain occupational users of pesticides demonstrate competency by meeting minimum competency requirements. The need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the need for changes to the regulation.

**Statement of Need:**

The regulations governing the Federal and State certification of pesticide applicators, 40 CFR part 171, were originally promulgated in 1974. Since that time State certification programs have gone beyond the Federal regulations in a number of areas. The need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the need for changes to the regulation. Stakeholders identified the need for a minimum standard of competency for all occupational users of pesticides as well as the establishment of standards for determination of applicator competency and continued competency.

**Summary of Legal Basis:**

7 U.S.C. 136w

**Alternatives:**

EPA is considering various alternatives to regulation change based upon stakeholder input. The Agency is in the formative stages of this regulatory effort, and alternatives have not yet been fully identified and evaluated.

**Anticipated Costs and Benefits:**

EPA will develop an economic analysis to support this rule.

**Risks:**

The proposed regulation would require that certain occupational users of pesticides meet minimum competency standards and require additional competency determinations of those who use the most toxic pesticides in a manner that could result in significant exposure to the public. These changes would strengthen the regulations that protect pesticide applicators and the public from potential harm due to pesticide exposure.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/08	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State, Tribal

**Additional Information:**

SAN No. 5007

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**RIN:** 2070-AJ20

**EPA**

**140. PESTICIDES; AGRICULTURAL WORKER PROTECTION STANDARD REVISIONS**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 136; 7 USC 136w

**CFR Citation:**

40 CFR 156; 40 CFR 170

**Legal Deadline:**

None

**Abstract:**

The EPA is developing a proposal to revise the federal regulations guiding agricultural worker protection (40 CFR 170). The changes under consideration are intended to improve agricultural workers' ability to protect themselves from potential exposure to pesticides and pesticide residues. In addition, EPA is proposing to make adjustments to improve and clarify current requirements and facilitate enforcement. Other changes sought are to establish a right-to-know Hazard Communication program and make improvements to pesticide safety training, with improved worker safety the intended outcome. The need for

change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations.

**Statement of Need:**

The regulations governing the protection of agricultural workers, 40 CFR part 170, were promulgated in 1992. Since that time, stakeholders provided input on areas to improve the regulation, particularly to better protect agricultural field workers and handlers from pesticide risks. The need for change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations. Stakeholders identified the need for a minimum standard of competency for all occupational users of pesticides as well as the establishment of standards for determination of applicator competency and continued competency.

**Summary of Legal Basis:**

7 U.S.C. 136w

**Alternatives:**

EPA is considering various alternatives to regulation change based upon stakeholder input. The Agency is in the formative stages of this regulatory effort, and alternatives have not been fully identified and evaluated.

**Anticipated Costs and Benefits:**

EPA will develop an economic analysis to support this rule.

**Risks:**

This proposal would reduce the risks to agricultural workers from potential exposure to pesticides and pesticide exposure.

**Timetable:**

Action	Date	FR Cite
NPRM	12/00/08	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 5006

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**RIN:** 2070-AJ22

**EPA**

**141. PESTICIDES; DATA REQUIREMENTS FOR PLANT-INCORPORATED PROTECTANTS (PIPS)**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 136a; 7 USC 136w

**CFR Citation:**

40 CFR 158 and 174

**Legal Deadline:**

None

**Abstract:**

EPA intends to propose codifying data requirements for the pesticide registration of plant-incorporated protectants (PIPs). These data requirements are intended to provide EPA with data and other information necessary for the registration of PIPs. These requirements would improve the Agency's ability to make regulatory decisions about the human health and environmental effects of these products. By codifying data requirements specific to PIPs, the regulated community would have a better understanding of and could better prepare for the registration process. This proposed rule

is one in a series of proposals to update and clarify pesticide data requirements.

#### Statement of Need:

There are currently no separate data requirements for plant-incorporated protectants (PIPs), a new type of pesticide first registered in the mid-1990s. Instead, the Agency has relied on the microbial pesticide data requirements tailored on a case-by-case basis. The information needed to support the registration of a PIP has evolved along with the expanding knowledge base of pesticide chemical technology. When established, these data requirements will reflect current scientific knowledge and understanding. Establishing these data requirements will provide stakeholders with greater transparency and clarity to determine the data needed for PIP pesticide product without having extensive consultations with the Agency and a more efficient registration process. Further, establishing these data requirements will improve the Agency's ability to make regulatory decisions about human health and environmental effects of PIP pesticides to better protect wildlife, the environment and people.

#### Summary of Legal Basis:

The final rule will describe data and information needed to support multiple pesticide mandates under two statutes: the registration, reregistration, registration review, and experimental use permit programs under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and the tolerance-setting and reassessment program under the Federal Food, Drug and Cosmetic Act (FFDCA). These programs are authorized under FIFRA sections 3, 4, and 5 and FFDCA sec 408.

#### Alternatives:

The Agency is required by its various statutory mandates to establish data requirements that support its regulatory decisions. On a case-by-case basis, the Agency considers whether alternative regulatory methods would obviate the need for data and explores the means of introducing flexibility and clarity to reduce burdens on the regulated community. For this rule, EPA will analyze several scenarios including establishing data requirements tailored specifically to PIP pesticides, not establishing any data requirements, and remaining status quo with relying on the microbial pesticide data requirements tailored on a case-by-case basis.

#### Anticipated Costs and Benefits:

The Agency is conducting an economic analysis to support this rule. Anticipated benefits include greater certainty and clearer understanding of the actual risk, increased clarity and transparency to the regulated community, improved scientific basis for pesticide regulatory decisions, and enhanced international harmonization with less duplication of data. However, since this rulemaking is currently under Agency workgroup discussion, the specific costs and benefits of the action have not yet been determined. The Agency expects this rule to result in decreased illness and death resulting from pesticide exposure.

#### Risks:

The proposed revisions to the data requirements, like the existing requirements in part 158, would require an applicant for pesticide registration to supply the Agency with information on the pesticide: Composition, toxicity, potential human exposure, environmental properties, and ecological effects. This information is used to assess the human health and environmental risks associated with the product. The data that will be required by this regulation form the foundation of EPA's risk assessment for pesticides, and provide a sound scientific basis for any licensing decisions that impose requirements that mitigate or reduce risks, and that ensure that pesticide residues in food meet the "reasonable certainty of no harm" risk standard of the Federal Food Drug and Cosmetic Act (FFDCA).

#### Timetable:

Action	Date	FR Cite
NPRM	05/00/08	

#### Regulatory Flexibility Analysis Required:

Undetermined

#### Government Levels Affected:

Federal

#### Additional Information:

SAN No. 5005

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RIN: 2070-AJ27

#### EPA

#### 142. REVISIONS TO THE SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) RULE

#### Priority:

Economically Significant. Major under 5 USC 801.

#### Legal Authority:

33 USC 1321

#### CFR Citation:

40 CFR 112

#### Legal Deadline:

None

#### Abstract:

EPA will propose to amend 40 CFR part 112, which includes the Spill Prevention, Control, and Countermeasure (SPCC) rule promulgated under the authority of the Clean Water Act. The proposed rule may address a variety of issues associated with the July 2002 SPCC final rule.

#### Statement of Need:

The proposed rule is necessary to clarify the regulatory obligations of SPCC facility owners and operators and to reduce the regulatory burden where appropriate.

#### Summary of Legal Basis:

33 USC 1321 et seq.

#### Alternatives:

EPA considered alternative options for various aspects of this proposed rule, following receipt of public comments, and through logical outgrowth of previously considered alternatives.



Alternative options included (1) exempting asphalt cement containers from the requirements of the SPCC rule; (2) exempting farms of a certain storage capacity, where the exact storage capacity has not been specified; (3) providing an exemption only for residential heating oil containers located at farms; (4) providing the same relief as in the preferred option to owners and operators of qualified facilities with total oil storage capacities of 5,000 gallons or less; (5) giving the option wherein owners and operators of new production facilities would be allowed one year after the start of operations to prepare and implement an SPCC Plan; (6) allowing the facilities to choose between a flowline maintenance program with a contingency plan (as in the proposed amendments) and providing a method of secondary containment for flowlines and intra-facility gathering lines; (7) regulatory alternatives for oil production facilities that have wells that produce 10 barrels or less of crude oil per day and are known as "stripper wells."

#### Anticipated Costs and Benefits:

At the 7 percent discount rate, the proposed amendments to the SPCC rule are expected to yield annualized cost savings of approximately \$7 million from the proposed exemption of hot-mix asphalt containers, \$4 million from the proposed changes for exempting pesticide application equipment, \$2 million from the proposed exemption of residential heating oil containers, \$251 million from the proposed amendments to the definition of facility, \$1 million from the proposed clarification to the facility diagram requirements, \$48 million from the proposed revision to the loading rack definition, \$24 million from the streamlined requirements for Tier 1 qualified facilities, \$7 million from the proposed amendments to the security requirements, \$9 million from the amendments to integrity testing requirements, \$2 million for owners and operators of AFVO facilities, \$25 million for owners and operators of production facilities from the six-month delay in SPCC Plan preparation and implementation, and \$8 million from exemption of flow-through process vessels from sized secondary containment. Additional benefits of this rule were not quantified because the impact of the rule on human health and environment are expected to be marginal. The principal effect of the proposed amendments would be lower compliance costs for owners and

operators of certain types of facilities and equipment.

#### Risks:

In the absence of quantitative information on the change in risk related to the specific proposed amendments, EPA conducted a qualitative assessment, which suggests that the proposed amendments will not lead to a significant increase in oil discharge risk.

#### Timetable:

Action	Date	FR Cite
Notice Clarifying Certain Issues	05/25/04	69 FR 29728
NPRM 1 yr Compliance Extension	06/17/04	69 FR 34014
Final 18 months Compliance Extension	08/11/04	69 FR 48794
NODA re certain facilities	09/20/04	69 FR 56184
NODA re oil-filled and process equipment	09/20/04	69 FR 56182
NPRM	10/15/07	72 FR 58377
NPRM Comment Period End	12/14/07	
Final Action	10/00/08	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

Federal, Local, State, Tribal

#### Additional Information:

SAN No. 2634.2; Split from RIN 2050-AC62.

#### URL For More Information:

[www.epa.gov/oilspill/spcc.htm](http://www.epa.gov/oilspill/spcc.htm)

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RIN: 2050-AG16

#### EPA

### 143. REVISIONS TO LAND DISPOSAL RESTRICTIONS TREATMENT STANDARDS AND AMENDMENTS TO RECYCLING REQUIREMENTS FOR SPENT PETROLEUM REFINING HYDROTREATING AND HYDROREFINING CATALYSTS

#### Priority:

Other Significant

#### Legal Authority:

42 USC 1006; 42 USC 2002(a); 42 USC 3001 to 3009; 42 USC 3014; 42 USC 6905; 42 USC 6906; 42 CFR 6912; 42 USC 6921; 42 USC 6922; 42 USC 6924 to 6927; 42 USC 6934; 42 USC 6937; 42 USC 6938

#### CFR Citation:

40 CFR 261; 40 CFR 266; 40 CFR 268

#### Legal Deadline:

None

#### Abstract:

Pursuant to regulations found at 40 CFR 260.20, the Vanadium Producers and Reclaimers Association (VPRA) submitted a rulemaking petition to the EPA requesting that the Agency amend the hazardous waste regulations affecting the treatment and disposal of certain petroleum refinery process wastes. Specifically, VPRA requested that EPA revise the treatment standards under the Land Disposal Restrictions (LDR) Program for the disposal of spent hydrotreating and hydrorefining catalysts (waste codes K171 and K172, respectively). EPA is publishing a notice in response to the rulemaking petition, by proposing to amend the Land Disposal Restriction (LDR) requirements for EPA Waste Code K172 by adding numeric treatment standards for certain polynuclear aromatic hydrocarbons (PAHs). EPA is also responding to other elements of the rulemaking petition in this notice. Finally, in response to separate comments received from petroleum industry representatives, EPA is taking this opportunity to propose changes to its regulations to help encourage consistent levels of recycling of spent hydrotreating and hydrorefining catalysts, in a manner that protects human health and the environment.

#### Statement of Need:

The purpose of this proposed rule, as described in the abstract, is to respond to a rulemaking petition. EPA believes that the petitioners have made suitably credible arguments that the existing requirements for treating and disposing

of certain refinery wastes may need adjusting, thus this proposal. In addition, regarding the recycling part of this action (again, described in the abstract above) EPA determined that exploring ways to encourage the recycling of these spent catalysts safely has merit.

**Summary of Legal Basis:**

There is no court order requiring this action.

**Alternatives:**

EPA decided that the alternative of not proposing this rule was not the option of choice. See Statement of Need. Further evaluation of alternatives may occur during the development of this action; currently in the early stages of development.

**Anticipated Costs and Benefits:**

No formal cost/benefit analysis has been performed to date.

**Risks:**

This rule is responding to a petition that alleges EPA's current rules do not adequately address the risk to human health and the environment associated with the disposal of spent refinery catalysts. EPA is currently trying to better understand the risk issues. At this time, this is undetermined.

**Timetable:**

Action	Date	FR Cite
Notice of Data Availability	10/20/03	68 FR 59935
NPRM	06/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State

**Additional Information:**

SAN No. 5070; EPA publication information: Notice of Data Availability - <http://www.epa.gov/fedrgstr/EPA-WASTE/2003/November/Day-24/f29319.htm>; ; EPA Docket information: Legacy Docket No. RCRA-2003-0023 for 10/20/03 NODA

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**RIN:** 2050-AG34

**EPA**

**144. • NPDES VESSEL VACATUR**

**Priority:**

Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

Not Yet Determined

**CFR Citation:**

40 CFR 122.3

**Legal Deadline:**

None

**Abstract:**

This action is necessary because EPA must address a District Court ruling (currently on appeal to the U.S. Court of Appeals for the 9th Circuit) which vacates a regulatory exemption at 40 CFR 122.3(a). Northwest Environmental Advocates v. U.S. Environmental Protection Agency (ND CA, C 03-5760 SI). The regulation excludes discharges incidental to the normal operation of a vessel from NPDES permitting and has existed, essentially unchanged, since 1973. Unless overruled on appeal, the Court's September 2006 ruling will vacate the entire exclusion as of September 30, 2008. As of September 30, 2008, discharges of pollutants incidental to the normal operation of a vessel that had formerly been exempted from NPDES permitting by the regulation will be subject to prohibitions in CWA § 301(a) against the discharge of a pollutant without a permit.

**Statement of Need:**

This action is necessary because EPA needs to address a District Court ruling (currently on appeal to the U.S. Court of Appeals for the 9th Circuit) which vacates a regulatory exemption at 40 CFR 122.3(a). Northwest Environmental Advocates v. U.S. Environmental Protection Agency (ND CA, C 03-5760 SI). The existing regulation excludes

discharges incidental to the normal operation of a vessel from NPDES permitting and has been on the books, essentially unchanged, since 1973. The Court's September 2006 ruling will vacate the entire exclusion as of September 30, 2008.

**Summary of Legal Basis:**

The legal basis is the Clean Water Act, 33 USC 1251 et seq.

**Alternatives:**

Unknown.

**Anticipated Costs and Benefits:**

Unknown.

**Risks:**

Unknown.

**Timetable:**

Action	Date	FR Cite
Proposal	01/00/08	
Final	To Be	Determined

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 5162;

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**RIN:** 2040-AE93

**EPA**

—————  
**FINAL RULE STAGE**  
 —————

**145. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): DEBOTTLENECKING, AGGREGATION AND PROJECT NETTING**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7401 et seq

**CFR Citation:**

40 CFR 51.165; 40 CFR 51.166; 40 CFR 52.21

**Legal Deadline:**

None

**Abstract:**

This project will revise rules governing the major new source review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). The new regulations will clarify and codify our policy of when multiple activities at a single major stationary source must be considered together for the purposes of determining major NSR applicability (“aggregation”). Also, we are changing the way emissions from permitted emissions units upstream or downstream from those undergoing a physical change or change in the method of operation are considered when determining if a proposed project will result in a significant emissions increase (“debottlenecking”). Finally, we are clarifying how emissions decreases from a project may be included in the calculation to determine if a significant emissions increase will result from a project (“project netting”). When final, these rules will improve implementation of the program by articulating and codifying principles for determining major NSR applicability that we currently address through guidance only. These rule changes reflect the EPA’s consideration of the EPA’s 2002 Report to the President and its associated recommendations as well as discussions with various stakeholders including representatives of environmental groups, State and local governments, and industry.

**Statement of Need:**

The current New Source Review program provides for emissions from

multiple projects to be aggregated (aggregation) as one single project under certain circumstances. Similarly, when making a PSD applicability calculation, emissions from units whose effective capacity and potential to emit have been increased as a result of a modification to another unit (debottlenecked units), must be included in the initial PSD applicability calculations. Specific questions regarding the application of these two terms have been addressed on a case-by-case basis. By completing this rulemaking, regulated entities and regulatory agencies will be provided an additional level of certainty in addressing applicability issues.

**Summary of Legal Basis:**

42 USC 7411(a)(4)

**Alternatives:**

Alternatives will be developed as the rulemaking proceeds.

**Anticipated Costs and Benefits:**

We are not able to provide quantitative estimates of the costs and benefits of this rule because of our inability to specifically identify the quantity, types, and locations of sources that will utilize this rulemaking in the future, and the difficulty in specifically quantifying the difference in environmental outcomes that would result with and without the rule. Qualitatively, our analysis indicates that we do not expect this rule to add to the costs of the program, nor do we expect that the environmental benefits of the program would significantly change as a result of this rulemaking.

**Risks:**

Risk information cannot be developed for this rule for the same reasons mentioned above regarding costs and benefits.

**Timetable:**

Action	Date	FR Cite
NPRM	09/14/06	71 FR 54235
Final Action	06/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Local

**Additional Information:**

SAN No. 4793; EPA publication information: NPRM -

<http://www.epa.gov/fedrgstr/EPA-AIR/2006/September/Day-14/a15248.htm>;

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**RIN:** 2060-AL75

**EPA**

**146. CONTROL OF EMISSIONS FROM NEW LOCOMOTIVES AND NEW MARINE DIESEL ENGINES LESS THAN 30 LITERS PER CYLINDER**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7522 to 7621

**CFR Citation:**

40 CFR 92; 40 CFR 94

**Legal Deadline:**

None

**Abstract:**

Locomotives and marine diesel engines are important contributors to our nation’s air pollution today accounting for about 20 percent of mobile source nitrogen oxides (NOx) emissions and about 25 percent of mobile source fine diesel particulate matter (PM 2.5) emissions. EPA is proposing a comprehensive program to significantly reduce emissions from locomotives and marine diesel engines. It would apply new exhaust emission standards and idle reduction requirements to diesel locomotives of all types—line-haul, switch, and passenger. It would also set new exhaust emission standards for all types of marine diesel engines below 30 liters per cylinder displacement. These include marine propulsion engines used on vessels from recreational and small fishing boats to super-yachts, tugs and Great Lakes freighters, and marine auxiliary engines

ranging from small gensets to large generators on ocean-going vessels. We estimate PM reductions of 90 percent and NOx reductions of 80 percent from engines meeting these standards, compared to engines meeting the current standards. EPA has already taken steps to bring emissions levels from light-duty and heavy-duty highway, and nonroad diesel vehicles and engines to very low levels over the next decade, while the emission levels for locomotive and marine diesel engines remain at much higher levels—comparable to the emissions for highway trucks in the early 1990s. The additional PM2.5 and NOx emission reductions resulting from the proposed standards would assist states in attaining and maintaining the Ozone and the PM2.5 National Air Quality Standards both near term and in the decades to come. The proposed program includes a set of near-term emission standards for newly-built engines. These would phase in starting in 2009. The near-term program also contains more stringent emissions standards for existing locomotives. These would apply when the locomotive is remanufactured and would take effect as soon as certified remanufacture systems are available (as early as 2008), but no later than 2010 (2013 for Tier 2 locomotives). We are requesting comment on an alternative under consideration that would apply a similar remanufacture requirement to existing marine diesel engines installed in vessels currently in the fleet. We are also proposing long-term emissions standards for newly-built locomotives and marine diesel engines based on the application of high-efficiency catalytic aftertreatment technology. These standards would phase in beginning in 2015 for locomotives and 2014 for marine diesel engines. Finally, we are proposing revised testing, certification, and compliance provisions to better ensure emissions control in use. Entities potentially regulated by this action are those which manufacture, remanufacture and/or import locomotives and/or locomotive engines; and those which own and operate locomotives. This proposed action would also affect companies and persons that manufacture, sell, or import into the United States new marine compression-ignition engines, companies and persons that rebuild or maintain these engines, companies and persons that make vessels that use such engines, and the owners/operators of such vessels.

#### Statement of Need:

Locomotive and marine diesel engines generate significant emissions of fine particulate matter (PM2.5) and nitrogen oxides (NOx) that contribute to nonattainment of the National Ambient Air Quality Standards for PM2.5 and ozone. NOx is a key precursor to ozone and secondary PM formation. These engines also emit hazardous air pollutants or air toxics, which are associated with serious adverse health effects. Emissions from locomotive and marine diesel engines also cause harm to public welfare, including contributing to visibility impairment and other harmful environmental impacts across the US. (The health and welfare impacts of these pollutants are described elsewhere in this Regulatory Agenda.) Emissions from locomotive and marine diesel engines account for substantial portions of the country's ambient PM2.5 and NOx levels. Today these engines account for about 20 percent of mobile source NOx emissions and about 25 percent of mobile source diesel PM 2.5 emissions. Under the standards EPA has proposed, by 2030 annual NOx emissions from these diesel engines would be reduced by 765,000 tons and PM2.5 emissions by 28,000 tons, and those reductions would continue to grow beyond 2030 as the fleet turnover to the clean engines is completed. State and local governments are working to protect the health of their citizens and comply with requirements of the Clean Air Act. As part of this effort they recognize the need to secure additional major reductions in both diesel PM2.5 and NOx emissions by undertaking numerous state level actions, while also seeking Agency action, including the setting of stringent new locomotive and marine diesel engine standards. The emission reductions in this proposal will play a critical part in state efforts to attain and maintain the National Air Quality Standards both near term and through the next two decades.

#### Summary of Legal Basis:

Authority for the actions in this proposed rule is granted to the Environmental Protection Agency (EPA) by sections 114, 203, 205, 206, 207, 208, 213, 216, and 301(a) of the Clean Air Act as amended in 1990. EPA is proposing emissions standards for new marine diesel engines pursuant to its authority under section 213(a)(3) and (4) of the Clean Air Act (CAA) and for new locomotives and new engines used in locomotives pursuant to its authority under section 213(a)(5) of the CAA. CAA section 213(a)(3) directs the

Administrator to set NOx, VOCs, or carbon monoxide standards for classes or categories of engines that contribute to ozone or carbon monoxide concentrations in more than one nonattainment area, such as marine diesel engines. CAA section 213(a)(4), authorizes the Administrator to establish standards to control emissions of pollutants which may reasonably be anticipated to endanger public health and welfare, where the Administrator determines, as it has done for emissions of PM, that nonroad engines as a whole contribute significantly to such air pollution. Finally, section 213(a)(5) directs EPA to adopt emission standards for new locomotives and new engines used in locomotives that achieve the greatest degree of emissions reductions achievable through the use of technology that the Administrator determines will be available for such vehicles and engines, taking into account the cost of applying such technology within the available time period, the noise, energy, and safety factors associated with the applications of such technology.

#### Alternatives:

We have developed emission inventory impacts, cost estimates and benefit estimates for two types of alternatives. The first type looks at the impacts of varying the timing and scope of our proposed standards. The second considers a programmatic alternative that would set emission standards for existing marine diesel engines. Alternative 1 examines the potential impacts of the locomotive remanufacturing program by excluding it from the analysis. Alternative 2 considers the possibility of pulling ahead the Tier 4 standards by one year for both the locomotive and marine programs, while leaving the rest of the proposed program unchanged. This alternative represents a more environmentally protective set of standards. However, our review of the technical challenges to introduce the Tier 4 program, especially considering the locomotive remanufacturing program and the Tier 3 standards which go before it, leads us to conclude that introducing Tier 4 a year earlier is not feasible. Alternative 3 most closely reflects the program we described in our Advanced Notice of Proposed Rulemaking, whereby we would set new aftertreatment based emission standards as soon as possible. In this case, alternative 3 eliminates our proposed Tier 3 standards and locomotive remanufacturing standards, while pulling the Tier 4 standards

ahead to 2013 (3 months after the introduction of 15 ppm ULSD). As with alternative 2, we are concerned that it may not be feasible to introduce Tier 4 technologies on locomotive and marine diesel engines earlier than the proposal specifies. Alternative 4 would eliminate the Tier 4 standards and retain the Tier 3 and locomotive remanufacturing requirements. This alternative allows us to consider the value of combining the Tier 3 and locomotive remanufacturing standards together as one program, and conversely, allows us to see the additional benefits gained when combining them with the Tier 4 standards. This alternative falls well short of the total benefits that our comprehensive program is expected to realize. Alternative 5 would establish a two-part marine engines remanufacturing program to reduce emissions from marine diesel engines above 800hp installed on commercial vessels. These engines remain in the fleet in excess of 20 years and can substantially contribute to air pollution. In part one, beginning as early as 2008, vessel owners and rebuilders (also called remanufacturers) would be required to use a certified kit when the engine is rebuilt (or remanufactured) if such a kit is available. In the second part, which could begin in 2013, the marine diesel engine identified by the EPA as a high-sales volume engine model would have to meet specified emission requirements when the engine is remanufactured. If no certified system were available, companies subject to these provisions would need to either retrofit an emission reduction technology for the engine that demonstrates at least a 25 percent reduction or repower (replace the engine with a new one). The second part of the program is contingent on EPA developing a list of high volume marine diesel engines for which a remanufacture certificate must be available by 2013. Finally, the second step of the program could be made subject to a technical review in 2011A summary of the five alternatives is contained in Tables VII-1 and VII-2 of the proposed rule. Table VII-1 includes the expected PM and NOx emission reductions, associated with each alternative through 2040 expressed as a net present value (NPV) using discounting rates of 3 percent and 7 percent. It also includes the estimated costs for each alternative through 2040 expressed at 3 percent NPV and 7 percent NPV. Table VI-2 shows the PM and NOx inventory reductions, costs,

and benefits of each alternative estimated for the year 2030.

#### Anticipated Costs and Benefits:

The total monetized benefits of the proposed standards, when based on published scientific studies of the risk of PM-related premature mortality, these benefits are projected to be more than \$12 billion in 2030, assuming a 3 percent discount rate (or \$11 billion assuming a 7 percent discount rate). Our estimate of total monetized benefits based on the PM-related premature mortality expert elicitation is between \$4.6 billion and \$33 billion in 2030, assuming a 3 percent discount rate (or \$4.3 and \$30 billion assuming a 7 percent discount rate). The social costs of the proposed program are estimated to be approximately \$600 million in 2030. The estimated 2030 social welfare cost of 567.3 million is based on an earlier version of the engineering costs of the rule which estimated \$568.3 million engineering costs in 2030 (see table V-15). The current engineering cost estimate for 2030 is \$605 million. See section V.C.5 for an explanation of the difference. The estimated social costs of the program will be updated for the final rule. The impact of these costs on society are estimated to be minimal, with the prices of rail and marine transportation services estimated to increase by less about 0.4 percent for locomotive transportation services and about 0.6 percent for marine transportation services. Though there are a number of health and environmental effects associated with the proposed standards that we are unable to quantify or monetize, the benefits of the proposed standards far outweigh the projected costs.

#### Risks:

The emissions of PM and ozone precursors from locomotive and marine diesel engines are associated with serious public health problems including premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function. In addition, emissions from locomotives and marine diesel engines are of particular concern, as diesel exhaust has been classified by EPA as a likely human carcinogen. Many people spend a large portion of time in or near areas of concentrated locomotive or marine diesel emissions, near rail yards, marine ports, railways, and waterways. Recent studies show that populations living near large diesel emission sources such as major

roadways, rail yards and marine ports are likely to experience greater diesel exhaust exposure levels than the overall US population, putting them at a greater health risk. Scientific studies show ambient PM is associated with a series of adverse health effects. The locomotive and marine diesel engines, covered in this proposal contribute to both short-and long-term PM2.5 exposures. Health effects associated with short-term exposures (hours to days) to ambient PM include premature mortality, increased hospital admissions, heart and lung diseases, increased cough, adverse lower-respiratory symptoms, decrements in lung function and changes in heart rate rhythm and other cardiac effects. Studies examining populations exposed to different levels of air pollution over a number of years show associations between long-term exposure to ambient PM2.5 and both total and cardio respiratory mortality. Locomotive and marine diesel engines also result in significant emissions of NOx and VOC emissions which contribute to the formation of ground-level ozone pollution or smog. People in many areas across the U.S. continue to be exposed to unhealthy levels of ambient ozone. The health and welfare effects of ozone are well documented and are assessed in EPA's 2006 ozone Air Quality Criteria Document (ozone AQCD) and EPA staff papers. Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's activity. Ozone can also aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. People who are more susceptible to effects associated with exposure to ozone include children, the elderly, and individuals with respiratory disease such as asthma. Locomotive and marine diesel engine emissions include diesel exhaust (DE), a complex mixture comprised of carbon dioxide, oxygen, nitrogen, water vapor, carbon monoxide, nitrogen compounds, sulfur compounds and numerous low-molecular-weight hydrocarbons. A number of these gaseous hydrocarbon components are individually known to be toxic including aldehydes, benzene and 1,3-butadiene. Locomotive and marine diesel engine exhaust emissions contribute to ambient levels of other air toxics known or suspected as human

or animal carcinogens, or that have non-cancer health effects. These other compounds include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, polycyclic organic matter (POM), and naphthalene. All of these compounds, except acetaldehyde, were identified as national or regional risk drivers in the 1999 National-Scale Air Toxics Assessment (NATA) and have significant inventory contributions from mobile sources. That is, for a significant portion of the population, these compounds pose a significant portion of the total cancer and non-cancer risk from breathing outdoor air toxics. The reductions in locomotive and marine diesel engine emissions proposed in this rulemaking would help reduce exposure to these harmful substances.

#### Timetable:

Action	Date	FR Cite
ANPRM	06/29/04	69 FR 39276
NPRM	04/03/07	72 FR 15938
Final Action	03/00/08	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

Federal

#### Additional Information:

SAN No. 4871;

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RIN: 2060-AM06

#### EPA

### 147. CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AND EQUIPMENT

#### Priority:

Economically Significant. Major under 5 USC 801.

#### Legal Authority:

42 USC 7521 to 7601(a)

#### CFR Citation:

40 CFR 90; 40 CFR 91

#### Legal Deadline:

NPRM, Statutory, December 1, 2004.

Final, Statutory, December 31, 2005.

#### Abstract:

We are setting emission standards for new nonroad spark-ignition engines that will substantially reduce emissions from these engines. The proposed exhaust emission standards would apply starting in 2009 for new marine spark-ignition engines, including first-time EPA standards for sterndrive and inboard engines. The proposed exhaust emission standards would apply starting in 2011 and 2012 for different sizes of new land-based, spark-ignition engines at or below 19 kilowatts (kW), which is equivalent to about 25 horsepower. These small engines are used primarily in lawn and garden applications. We are also proposing to adopt evaporative emission standards for vessels and equipment using any of these engines. Nationwide, these emission sources contribute to ozone, carbon monoxide (CO), and particulate matter (PM) nonattainment.

We estimate that by 2030, this proposed rule would result in significantly reduced pollutant emissions from regulated engine and equipment sources, including estimated annual nationwide reductions of 631,000 tons of volatile organic hydrocarbon emissions, 98,200 tons of NOx emissions, and 6,300 tons of direct particulate matter (PM2.5) emissions. These reductions correspond to significant reductions in the formation of ground-level ozone. We would also expect to see annual reductions of 2,690,000 tons of carbon monoxide emissions, with the greatest reductions in areas where there have been problems with individual exposures. The requirements in this rule will substantially benefit public health and welfare and the environment. We estimate that by 2030, the proposal's emission reductions would annually prevent 450 PM-related premature deaths, approximately 500 hospitalizations, and 52,000 work days lost. The total estimated annual benefits of the proposed rule in 2030 would be \$3.4 billion. Estimated costs in 2030 would be many times less at \$240 million.

#### Statement of Need:

Nationwide, emissions from Marine SI engines and Small SI engines contribute significantly to mobile source air pollution. By 2020 without this final rule these engines would account for about 27 percent (1,352,000 tons) of mobile source volatile organic hydrocarbon compounds (VOC) emissions, 31 percent (16,374,000 tons)

of mobile source carbon monoxide (CO) emissions, 4 percent (202,000 tons) of mobile source oxides of nitrogen (NOx) emissions, and 16 percent (39,000 tons) of mobile source particulate matter (PM2.5) emissions. The new standards will reduce exposure to these emissions and help avoid a range of adverse health effects associated with ambient ozone, CO, and PM levels. In addition, the new standards will help reduce acute exposure to CO, air toxics, and PM for persons who operate or who work with or are otherwise active in close proximity to these engines. They will also help address other environmental problems associated with Marine SI engines and Small SI engines, such as visibility impairment in our national parks and other wilderness areas. These effects are described in more detail in subsequent sections of this Preamble.

#### Summary of Legal Basis:

Clean Air Act section 213(a)(1) directs EPA to study emissions from nonroad engines and vehicles to determine, among other things, whether these emissions "cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Section 213(a)(2) further requires us to determine whether emissions of CO, VOC, and NOx from all nonroad engines significantly contribute to ozone or CO concentrations in more than one nonattainment area. If we determine that emissions from all nonroad engines do contribute significantly to these nonattainment areas, section 213(a)(3) then requires us to establish emission standards for classes or categories of new nonroad engines and vehicles that cause or contribute to such pollution. Specific statutory direction to set standards for nonroad spark-ignition engines comes from section 428(b) of the 2004 Consolidated Appropriations Act, which requires EPA to adopt regulations under the Clean Air Act "that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower."

#### Alternatives:

For Small spark-ignition engines, we considered what is achievable with catalyst technology. Our technology assessment work indicated that the proposed emission standards are feasible in the context of provisions for establishing emission standards prescribed in section 213 of the Clean Air Act. We also considered what can

be achieved with larger, more efficient catalysts and improved fuel induction systems. Based on this work we evaluated more stringent HC+NO<sub>x</sub> standards involving a 50 percent reduction for Class I engines and a 65-70 percent reduction for Class II engines.

For Marine SI engines, we considered a more stringent exhaust emission standard for outboard and personal watercraft engines. This second tier of standards could apply starting in 2012 or later. Such a standard would be consistent with currently certified emission levels from a significant number of four-stroke outboard engines.

We considered both more and less stringent evaporative emission control alternatives. For small equipment, we considered a less stringent alternative without running loss emission standards. However, we believe that controlling running loss and diffusion emissions from non-handheld equipment is feasible at a relatively low cost. For a more stringent alternative, we considered applying a diurnal emission standard for all small equipment. We believe that passively purging carbon canisters could reduce diurnal emissions by 50 to 60 percent from small equipment. For marine vessels, we considered a less stringent alternative, where there would be no diurnal emission standard for vessels with installed fuel tanks. For a more stringent scenario, we considered a standard that would require boat builders to use an actively purged carbon canister. This means that, when the engine is operating, it would draw air through the canister to purge the canister of stored hydrocarbons.

#### Anticipated Costs and Benefits:

The requirements in this proposed rule would substantially benefit public health and welfare and the environment. We estimate that by 2030, these proposed emission reductions would annually prevent 450 PM-related premature deaths, approximately 500 hospitalizations, and 52,000 work days lost. The total estimated annual benefits of this proposed rule in 2030 would be about \$3.4 billion. Estimated costs in 2030 would be many times less at \$240 million.

#### Risks:

The health benefits associated with this proposed rule are expressed in terms of avoided premature mortalities and other endpoints, and have been estimated based on scaling of detailed

modeling results from EPA's Clean Air Nonroad Diesel regulation.

#### Timetable:

Action	Date	FR Cite
NPRM	05/18/07	72 FR 28098
Final Action	06/00/08	

#### Regulatory Flexibility Analysis Required:

Yes

#### Small Entities Affected:

Businesses

#### Government Levels Affected:

None

#### Additional Information:

SAN No. 4882;

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RIN: 2060-AM34

#### EPA

#### 148. AMENDMENT OF THE STANDARDS FOR RADIOACTIVE WASTE DISPOSAL IN YUCCA MOUNTAIN, NEVADA

#### Priority:

Other Significant

#### Legal Authority:

PL 102-486

#### CFR Citation:

40 CFR 197

#### Legal Deadline:

None

#### Abstract:

This action will amend the standards for Yucca Mountain, Nevada (40 CFR Part 197). These standards were issued in 2001 and were partially remanded by a Federal court in 2004. These amendments will address the remanded portion of the standards, viz., the compliance period. Yucca Mountain is the site of a potential geologic repository for spent nuclear fuel and high-level radioactive waste. It is about 100 miles northwest of Las Vegas, Nevada, and straddles the boundaries of the Nevada Test Site, Bureau of Land Management land, and an Air Force

bombing range. The site is being developed by the Department of Energy (DOE). The DOE will submit a license application to the Nuclear Regulatory Commission (NRC). We (EPA) were given the authority to set Yucca Mountain-specific standards in the Energy Policy Act of 1992 (EnPA). The EnPA also requires NRC to adopt our standards in its licensing regulations and use them as a basis to judge compliance of the repository's performance. The Agency issued final Yucca Mountain standards in 2001. In July 2004, the DC Circuit Court returned the standards to EPA for reconsideration of the regulatory time frame. The Court found that the 10,000-year compliance period violates our authorizing statute for Yucca Mountain regulation because it is not "based upon and consistent with" scientific recommendations required from the National Academy of Sciences under the legislation. To address the Court's opinion, we must reassess the time frame in light of the National Academy's recommendation that compliance must be addressed at the time of peak dose, which may be as long as several hundred thousand years into the future.

#### Statement of Need:

Congress selected Yucca Mountain as the Nation's only candidate site for a repository for nuclear spent fuel and high-level radioactive waste. The Energy Policy Act of 1992 requires EPA to set Yucca-Mountain-specific standards. Standards were promulgated in 2001. In July 2004, the DC Circuit Court returned the standards to EPA for reconsideration of the regulatory time frame.

#### Summary of Legal Basis:

The Energy Policy Act of 1992 requires EPA to set Yucca-Mountain-specific standards. Standards were promulgated in 2001. In July 2004, the DC Circuit Court returned the standards to EPA for reconsideration of the regulatory time frame.

#### Alternatives:

To address the Court's opinion, we must reassess the time frame in light of the National Academy's recommendation that compliance must be addressed at the time of peak dose, which may be as long as several hundred thousand years into the future. Alternatives addressing that recommendation will be developed as the rulemaking proceeds.

**Anticipated Costs and Benefits:**

An economic impact assessment (EIA) was performed for the proposed rulemaking. The EIA showed that many of the arguments and conclusions of the EIA for the original standards in 2001 are applicable to the proposed rule, which extends the compliance period from 10,000 years to as long as 1 million years. Specifically, the need to evaluate compliance with the individual protection standard is the same, the types of information needed to make those evaluations are the same, the performance assessment methodologies are the same, and the reasonable expectation approach to establishing the basis for the evaluations and compliance decisions is the same. Consequently, the proposed changes to the standards do not require additional efforts in site characterization, design, or assessment methodology development. Because DOE is not expected to make changes, undertake significant site characterization, or drastically revise its performance approach or models as a result of EPA's revisions to the 2001 rulemaking, there are no costs directly attributable to EPA's rulemaking.

**Risks:**

As a result of the standards extending to as long as an unprecedented 1 million years, approaches for characterizing and expressing the risk are under consideration, and will be addressed in the final rulemaking.

**Timetable:**

Action	Date	FR Cite
NPRM	08/22/05	70 FR 49014
Final Action	01/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

**Additional Information:**

SAN No. 4964; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2005/August/Day-22/a16193.htm>

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**RIN:** 2060-AN15

**EPA****149. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE****Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7408; 42 USC 7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

NPRM, Judicial, June 20, 2007, Consent decree.

Final, Judicial, March 12, 2008, Consent decree.

**Abstract:**

The Clean Air Act Amendments of 1977 require EPA to review and, if necessary, revise national ambient air quality standards (NAAQS) periodically. On July 18, 1997, the EPA published a final rule revising the NAAQS for ozone. The primary and secondary NAAQS were strengthened to provide increased protection against both health and environmental effects of ozone. The EPA's work plan/schedule for the next review of the ozone Criteria Document was published on November 2002. The first external review draft Criteria Document, a rigorous assessment of relevant scientific information, was released on January 31, 2005. The EPA's Office of Air Quality Planning and Standards will prepare a Staff Paper for the Administrator, which will evaluate the policy implications of the key studies and scientific information contained in the Criteria Document and

additional technical analyses, and identify critical elements that EPA staff believe should be considered in reviewing the standards. The Criteria Document was reviewed by CASAC and the public, changes were incorporated, and the final Criteria Document was released on March 21, 2006. The Staff Paper was released on January 31, 2007. As the ozone NAAQS review is completed, the Administrator's proposal to reaffirm or revise the ozone NAAQS will be published with a request for public comment. Input received during the public comment period will be considered in the Administrator's final decision.

**Statement of Need:**

As established in the Clean Air Act, the national ambient air quality standards for ozone are to be reviewed every five years.

**Summary of Legal Basis:**

Section 109 of the Clean Air Act (42 USC 7409) directs the Administrator to propose and promulgate "primary" and "secondary" national ambient air quality standards for pollutants identified under section 108 (the "criteria" pollutants). The "primary" standards are established for the protection of public health, while "secondary" standards are to protect against public welfare or ecosystem effects.

**Alternatives:**

The main alternatives for the Administrator's decision on the review of the national ambient air quality standards for ozone are whether to reaffirm or revise the existing standards.

**Anticipated Costs and Benefits:**

A regulatory impact analysis (RIA) has been prepared that presents the costs and benefits associated with the proposed revised ozone standards and two other alternative standards. This RIA was issued in late July, and the document is available at <http://www.epa.gov/ttn/ecas/ria.html>.

**Risks:**

The current national ambient air quality standards for ozone are intended to protect against public health risks associated with morbidity and/or premature mortality and public welfare risks associated with adverse vegetation and ecosystem effects. During the course of this review, risk assessments will be conducted to evaluate health and welfare risks



associated with retention or revision of the ozone standards.

**Timetable:**

Action	Date	FR Cite
Notice	12/29/05	70 FR 77155
NPRM	07/11/07	72 FR 37818
Final Action	03/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Local, Tribal

**Additional Information:**

SAN No. 5008; EPA publication information: Notice - <http://www.epa.gov/fedrgstr/EPA-AIR/2005/December/Day-29/a24608.pdf>;

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**RIN:** 2060-AN24

**EPA**

**150. PREVENTION OF SIGNIFICANT DETERIORATION AND NONATTAINMENT NEW SOURCE REVIEW: EMISSION INCREASES FOR ELECTRIC GENERATING UNITS**

**Priority:**

Other Significant

**Legal Authority:**

Clean Air Act, title I, parts C and D and Section 111(a)(4)

**CFR Citation:**

40 CFR 51; 40 CFR 52

**Legal Deadline:**

None

**Abstract:**

This rulemaking would revise the emissions test for existing electric generating units (EGUs) that are subject to the regulations governing the Prevention of Significant Deterioration (PSD) and nonattainment major New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). The existing emissions test compares actual emissions to either potential emissions or projected actual emissions. Under this rulemaking's revised NSR emissions test (a maximum hourly test like that used in the NSPS program), we would compare the EGU's maximum hourly emissions (considering controls) before the change for the past 5 years to the maximum hourly emissions after the change. The maximum hourly emissions test will be based either on maximum achieved or maximum achievable hourly emissions, measured on an input or an output basis. One proposed option provides that the maximum hourly emissions increase test would be followed by the annual emissions increase test in the current rules.

**Statement of Need:**

Utilization of this rulemaking's alternative NSR applicability test for existing EGUs would encourage increased utilization at the more efficient units by displacing energy production at less efficient ones.

**Summary of Legal Basis:**

Parts C and D of title I of the Clean Air Act; CAA section 111(a)(4)

**Alternatives:**

The proposed basis for the applicability test is a comparison of maximum hourly emissions, which will enhance the implementation and environmental benefits for existing EGUs.

**Anticipated Costs and Benefits:**

We are not able to provide quantitative estimates of the costs and benefits of this rule because of the difficulty in identifying the quantity and locations of sources that will utilize this rulemaking in the future, and the difficulty in specifically quantifying the difference in environmental outcomes that would result with and without the rule. Qualitatively, our analysis indicates that we anticipate a reduction in recordkeeping and reporting—and therefore a decrease in cost—and we expect that the environmental benefits of the program would not significantly change and may improve as a result of the positive impact on the safety,

reliability, and efficiency of EGUs as a result of this rulemaking.

**Risks:**

Risk information will be developed as appropriate as the rulemaking proceeds.

**Timetable:**

Action	Date	FR Cite
NPRM	10/20/05	70 FR 61081
Supplemental NPRM	05/08/07	72 FR 26202
Final Action	08/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 4794.2; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2005/October/Day-20/a20983.htm> Split from RIN 2060-AM95.

**URL For More Information:**

[www.epa.gov/nsr](http://www.epa.gov/nsr)

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**RIN:** 2060-AN28

**EPA**

**151. FINAL RULE FOR IMPLEMENTATION OF THE NEW SOURCE REVIEW (NSR) PROGRAM FOR PM2.5**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7410; 42 USC 7501 et seq

**CFR Citation:**

40 CFR 51

**Legal Deadline:**

None

**Abstract:**

This rulemaking action is the final rule which lays out the provisions and requirements for implementation of the NSR program for particulate matter less than 2.5 microns in diameter (PM2.5). This rule would apply to new and modified major stationary sources of PM2.5. In 1997, EPA promulgated National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM2.5). EPA designations of 39 nonattainment areas for the PM2.5 standards became effective on April 5, 2005. The Clean Air Fine Particle Implementation Rule, which was proposed in the Federal Register on November 1, 2005, included requirements and guidance for State and local air pollution agencies to follow in developing State implementation plans (SIPs) designed to bring areas into attainment with the 1997 standards. The proposed rule also included the New Source Review (NSR) provisions for implementing the PM2.5 program. In this final action, we have split the NSR provisions of the proposed rule as a separate package. This rule will address the applicability of NSR to precursors, Major Source Threshold and Significant Emissions Rate for PM2.5, preconstruction monitoring requirements, offset provisions and inter pollutant trading of offsets and finally the transition provisions.

**Statement of Need:**

This rule is needed to promulgate the federal requirements for implementing a PM2.5 NSR program States and local agencies have until April 5, 2008 in preparing State implementation plans (SIPs) designed to address the NSR requirements for PM2.5.

**Summary of Legal Basis:**

42 USC 7410 and 42 USC 7501 et seq.

**Alternatives:**

Alternatives will be explored as the final rule is developed.

**Anticipated Costs and Benefits:**

We are not able to provide quantitative estimates of the costs and benefits of this rule because of our inability to specifically identify the quantity, types, and locations of sources that will be subject to this rulemaking in the future, and the difficulty in specifically quantifying the difference in environmental outcomes that would result with and without the rule.

Qualitatively, our analysis indicates that we do not expect this rule to add to the costs of the program, nor do we expect that the benefits of the program will significantly change.

**Risks:**

Since the risks of PM2.5 emissions exposure have been addressed in the PM2.5 NAAQS rule, we do not anticipate any additional risk reduction as a result of implementing this rule.

**Timetable:**

Action	Date	FR Cite
NPRM	11/01/05	70 FR 65984
Final Action	11/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 4752.2; Split from RIN 2060-AK74.

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RIN: 2060-AN86

**EPA****152. LEAD-BASED PAINT; AMENDMENTS FOR RENOVATION, REPAIR AND PAINTING****Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

This action may affect the private sector under PL 104-4.

**Legal Authority:**

15 USC 2682 "TSCA section 402"; 15 USC 2684 "TSCA section 404"

**CFR Citation:**

40 CFR 745

**Legal Deadline:**

Final, Statutory, October 28, 1996.

NPRM, Statutory, December 30, 2005, Administration deadline.

**Abstract:**

In 2008, EPA will continue its work towards the Administration goal of eliminating childhood lead poisoning as a national health concern by 2010 by implementing a comprehensive program to address lead-based paint hazards associated with renovation, repair and painting activities. The program will be comprised of a combination of approaches including regulations, and an extensive education and outreach campaign that will include elements specifically designed for industry and consumers. Industry outreach will include dissemination of information regarding the regulation, lead-safe work practices, and training opportunities. Consumer outreach will be designed to expand consumer awareness, and create demand for the use of lead-safe work practices. EPA plans to finalize and begin implementation of the Renovation, Repair and Painting Program regulations in 2008. EPA proposed these regulations on January 10, 2006 and amended that proposal on June 5, 2007 to include child occupied facilities within the scope of the rule. The regulation should minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair, and painting activities. The regulations would require contractors conducting renovation, repair and painting activities in most target housing and child occupied facilities to be trained, certified, and to follow work practice standards designed to minimize the creation of lead hazards.

**Statement of Need:**

Childhood lead poisoning is a pervasive problem in the United States, with almost a million young children having more than 10 ug/dl of lead in their blood (Center for Disease Control's level of concern). Although there have been dramatic declines in blood-lead levels due to reductions of lead in paint, gasoline, and food sources, remaining paint in older houses continues to be a significant source of childhood lead poisoning. These rules will help insure that individuals and firms conducting renovation, repairs and painting activities will do so in a

way that safeguards the environment and protects the health of building occupants, especially children under 6 years old.

**Summary of Legal Basis:**

This regulation is mandated by TSCA section 402(c). TSCA Section 402(c) directs EPA to address renovation and remodeling activities by first conducting a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular basis. Section 402(c) further directs the Agency to revise the lead-based paint activities regulations (40 CFR part 745 subpart L) to apply to renovation, remodeling or painting activities that create lead-based paint hazards.

**Alternatives:**

EPA is considering alternatives including on the job training for renovation workers, the use of test kits to determine the presence of lead paint, and the use of a cleaning verification protocol to determine if a job site is sufficiently clean. TSCA Section 402(c) states that should the Administrator determine that any category of contractors engaged in renovation or remodeling does not require certification; the Administrator may publish an explanation of the basis for that determination.

**Anticipated Costs and Benefits:**

EPA's economic analysis provides quantitative cost estimates for the training, certification, and work practices required by the rule. The economic analysis provides quantitative benefits estimates for avoided incidence of IQ loss due to reduced lead exposures to children under the age of 6, and a qualitative discussion of other avoided adverse health effects in children and adults. The economic analysis of the final rule will incorporate new information characterizing lead levels in dust and soil after renovation, repair, and painting activities, and a new modeling approach to estimate the resultant blood lead and IQ loss in children under the age of 6.

**Risks:**

This rule is aimed at reducing the prevalence and severity of lead poisoning, particularly in children. The Agency has concluded that many R&R work activities can produce or release large quantities of lead. These activities

include, but are not limited to: sanding, cutting, window replacement, and demolition. Lead exposure to R&R workers appears to be less of a problem than to building occupants (especially young children). Some workers (and homeowners) are occasionally exposed to high levels of lead. Any work activity that produces dust and debris may create a lead exposure problem.

**Timetable:**

Action	Date	FR Cite
NPRM	01/10/06	71 FR 1588
Notice of Availability; Supplemental Economic Analysis	03/02/06	71 FR 10628
Notice of Availability; Draft Pamphlet	03/08/06	71 FR 11570
Request for Comment; Lead Paint Test Kit Development	03/16/06	71 FR 13561
NPRM: Extension of Comment Period	04/06/06	71 FR 17409
Notice of Availability; Study Results	03/16/07	72 FR 12582
Supplemental NPRM Final Action	06/05/07 03/00/08	72 FR 31022

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses, Governmental Jurisdictions, Organizations

**Government Levels Affected:**

Federal, Local, State, Tribal

**Additional Information:**

SAN No. 3557; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-TOX/2006/January/Day-10/t071.htm>; EPA Docket information: EPA-HQ-OPPT-2005-0049; Individual Document id in the EPA docket: [www.regulations.gov](http://www.regulations.gov)

**Sectors Affected:**

23599 All Other Special Trade Contractors; 23551 Carpentry Contractors; 53111 Lessors of Residential Buildings and Dwellings; 23322 Multifamily Housing Construction; 23521 Painting and Wall Covering Contractors; 531311 Residential Property Managers; 23321 Single Family Housing Construction; 54138 Testing Laboratories

**URL For More Information:**

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**RIN:** 2070-AC83

**EPA**

**153. REGULATION OF OIL-BEARING HAZARDOUS SECONDARY MATERIALS FROM THE PETROLEUM REFINING INDUSTRY PROCESSED IN A GASIFICATION SYSTEM TO PRODUCE SYNTHESIS GAS**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 6901; 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937; 42 USC 6938; 42 USC 6939; 42 USC 6974

**CFR Citation:**

40 CFR 260; 40 CFR 261

**Legal Deadline:**

None

**Abstract:**

The U.S. Environmental Protection Agency (EPA) is considering finalizing revisions to the RCRA hazardous regulations to exclude oil-bearing secondary materials, generated by the petroleum refining industry, from the definition of solid waste if the materials are destined to be processed in a gasification device manufacturing synthesis gas fuel. We are considering this exclusion in order to clarify and simplify RCRA jurisdiction, and to be consistent with other comparable existing exclusions in the petroleum refining industry.

**Statement of Need:**

We are undertaking the rulemaking to:

- (1) Prevent unnecessary confusion regarding the status of recycling of oil-bearing hazardous secondary material from the petroleum industry in a gasification system;
- (2) promote the use of a technologically advanced method of extracting hydrocarbons from secondary materials;
- and (3) remove regulatory restrictions that may limit the petroleum refining industry's ability to maximize the production of fuels and materials commodities from petroleum refining while minimizing the generation of waste.

**Summary of Legal Basis:**

No aspect of this action is required by statute or court order.

**Alternatives:**

Based on comments and additional analysis, we are looking into whether a separate exclusion is unnecessary and overly prescriptive and whether our original strategy of amending the existing regulatory language found at 40 CFR 261.4(a)(12) should be done.

**Anticipated Costs and Benefits:**

We estimate the rule will yield between \$46.4 million and 48.7 million in net social benefits per year. Avoided waste management costs make up the most significant share of the benefits followed by feedstock savings. Commercial facilities that manage refinery wastes may experience annual revenue losses of \$10.8 million to \$15.1 million under the final rule.

**Risks:**

N/A

**Timetable:**

Action	Date	FR Cite
NPRM	03/25/02	67 FR 13684
Notice: Extension of Comment Period	06/11/02	67 FR 39927
Final Action	02/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State

**Additional Information:**

SAN No. 4411; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-WASTE/2002/March/Day-25/f7097.htm>; This is an extension of a previous

notice that contained the following RIN: 2050-AD88.; EPA Docket information: F-2002-RPRP-

**Sectors Affected:**

32411 Petroleum Refineries

**URL For More Information:**

<http://www.epa.gov/epaoswer/hazwaste/gas-fs.pdf>

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RIN: 2050-AE78

**EPA****154. EXPANDING THE COMPARABLE FUELS EXCLUSION UNDER RCRA****Priority:**

Other Significant

**Legal Authority:**

RCRA 4004

**CFR Citation:**

40 CFR 261.38

**Legal Deadline:**

None

**Abstract:**

EPA currently excludes specific industrial wastes, also known as comparable fuels, from most Resource Conservation and Recovery Act (RCRA) hazardous waste management requirements when the wastes are used for energy production and do not contain hazardous constituent levels that exceed those found in a typical benchmark fuel that facilities would otherwise use. Using such wastes as fuel saves energy by reducing the amount of hazardous waste that would otherwise be treated and disposed, promotes energy production from a domestic, renewable source, and reduces use of fossil fuels. With an interest in supplementing the nation's energy supplies and to ensure that

energy sources are managed only to the degree necessary to protect human health and the environment, EPA, as part of the Resource Conservation Challenge, is examining the effectiveness of the current comparable fuel program and considering whether other industrial wastes could be safely used as fuel as well. As part of this investigation, EPA has proposed to expand the existing comparable fuel exclusion and is seeking comment on that proposal.

**Statement of Need:**

EPA has proposed to expand the comparable fuel exclusion under section 261.38 of the rules implementing subtitle C of the Resource Conservation and Recovery Act (RCRA) for fuels that are produced from hazardous waste but which generate emissions that are comparable to emissions from burning fuel oil when such fuels are burned in an industrial boiler. Such excluded fuel would be called emission-comparable fuel (ECF). ECF would be subject to the same specifications that currently apply to comparable fuels, except that the specifications for certain hydrocarbons and oxygenates would not apply. The ECF exclusion would be conditioned on requirements including: design and operating conditions for the ECF boiler to ensure that the ECF is burned under the good combustion conditions typical for oil-fired industrial boilers; and conditions for tanks storing ECF which conditions are typical of those for storage of commercial fuels, and are tailored for the hazards that ECF may pose. This rule, if finalized, is intended to save energy by reducing the amount of hazardous waste that would be otherwise treated and disposed, and also to promote energy production from a domestic, renewable source and reduce our use of fossil fuels.

**Summary of Legal Basis:**

This action is discretionary on the Agency's part.

**Alternatives:**

To make significant changes to the existing comparable fuels standard, EPA must modify the existing regulations. EPA has proposed modified regulations and is seeking comment on those potential regulatory modifications.

**Anticipated Costs and Benefits:**

This rule, as proposed, is projected to result in a benefit to society in the form of net cost savings to the private sector, on a nationwide basis, thereby allowing

for the more efficient use of limited resources elsewhere in the market. This is accomplished without compromising protection of human health and the environment by ensuring comparable emissions from the burning of high Btu value waste. The total net social benefits projected as a result of this rule, as proposed, are estimated at approximately \$23 million per year. Avoided management and fuel costs represent the vast majority of all benefits (cost savings). Transportation, boiler retrofits, and analytical costs represent the majority of the costs. This estimate assumes all States adopt the rule, and incorporates all cost savings to affected generators, less all associated costs. Nearly 183,000 tons (U.S.) of waste are expected to initially qualify for the exclusion with approximately 107,000 tons/year actually excluded. Of this total, we estimate that approximately 34,000 tons are not currently burned for energy recovery.

**Risks:**

The exclusion for emission-comparable fuel (ECF) would be based on the rationale that ECF has fuel value, that the hydrocarbon and oxygenate constituents no longer subject to a specification themselves have fuel value, and that emissions from burning ECF in an industrial boiler operating under good combustion conditions are likely not to differ from emissions from burning fossil fuels under those same conditions. Emissions from burning ECF in an industrial boiler operating under good combustion conditions would be comparable to emissions from burning fuel oil in an industrial boiler operating under the same good combustion conditions because operating a boiler under good combustion conditions, evidenced by carbon monoxide (CO) emissions below 100 ppmv (on an hourly rolling average), assures the destruction of organic compounds generally to trace levels, irrespective of the type or concentration of the organic compound in the feed. Given that ECF (including the hydrocarbon and oxygenate portion) would have legitimate energy value and that emissions from burning ECF are comparable to fuel oil when burned in an industrial boiler under the good combustion conditions typical of such boilers, classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating a risk from burning greater than those posed by fossil fuel. Under these circumstances,

EPA can permissibly classify ECF as a non-waste.

**Timetable:**

Action	Date	FR Cite
NPRM	06/15/07	72 FR 33284
Notice: Extension of Comment Period	07/19/07	72 FR 39587
Final Action	11/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 4977; ; EPA Docket information: EPA-HQ-RCRA-2005-0017; <http://www.regulations.gov>

**URL For More Information:**

<http://www.epa.gov/epaoswer/hazwaste/combust/compfuels/exclusion.htm>

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**RIN:** 2050-AG24

**EPA**

**155. DEFINITION OF SOLID WASTES REVISIONS**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 6903 "RCRA Section 1004"

**CFR Citation:**

40 CFR 261.2

**Legal Deadline:**

None

**Abstract:**

On October 28, 2003 (68 FR 61558), EPA proposed revisions to the definition of solid waste for hazardous secondary materials being reclaimed in a continuous process in the generating industry in an effort to increase the recycling of such materials. The Agency also took comment on a broader proposal to exclude hazardous secondary materials from being a solid waste under RCRA Subtitle C. This proposal was in part prompted by various court decisions about the extent of RCRA jurisdiction over hazardous secondary materials being recycled. In the same notice, the Agency also proposed criteria for determining whether or not hazardous secondary materials are recycled legitimately; the legitimacy criteria would apply to both those hazardous secondary materials that were excluded, as well as those that would remain subject to regulation under Subtitle C of RCRA. EPA received numerous comments on the proposal. In addition, EPA has conducted studies of recycling practices and the circumstances under which recycling of hazardous secondary materials are reclaimed in an environmentally sound manner, as well as when such reclamation has caused environmental problems. Based on the comments received and the new information being made available for public comment, the Agency issued a supplemental proposal on March 26, 2007 (72 FR 14172) to exclude from being a solid waste certain hazardous secondary materials that are reclaimed. We also took comment on revisions being considered to the legitimacy criteria, as well as on a variance process regarding hazardous secondary materials that are recycled.

**Statement of Need:**

EPA is revising the definition of solid waste to increase recycling.

**Summary of Legal Basis:**

Association of Battery Recyclers v. EPA, 203 F. 2d 1047 (D.C. Cir. 2000); American Mining Congress v. EPA, 824 F. 2d 1177 (D.C. Cir. 1987) and other cases.

**Alternatives:**

We have solicited comment in the proposal on several alternative regulatory options, including a broad exclusion for legitimately recycled materials, and are evaluating public comments on all available options.

**Anticipated Costs and Benefits:**

If the exclusions are promulgated as proposed and are adopted by all states, EPA expects this action to result in a net effect of \$107 million in average annual cost savings to about 4600 facilities in 530 industries, and is expected to remove from RCRA regulation 0.65 million tons per year of hazardous secondary materials currently managed as RCRA hazardous waste, and 0.06 million tons (9%) of hazardous waste that is currently disposed (i.e., landfilled or incinerated), which EPA expects may switch to recycling as a result of this rule. The breakdown of net cost savings per exclusion is \$87 million per year for materials recycled onsite, by the same company, or through a tolling arrangement, \$19 million per year for intercompany offsite recycling, and one million per year for case-by-case non-waste determinations. These estimates are within the uncertainty range of \$93 million to \$205 million in annual materials management cost savings, and 0.33 to 1.70 million tons per year in affected hazardous secondary materials, respectively, for the net effect of the proposed regulatory exclusions.

**Risks:**

EPA has conducted three new studies that address the following risk-related questions: (1) How do recyclers ensure that industrial recycling is done in an environmentally safe manner?; (2) to what extent has industrial recycling resulted in past environmental problems?; and (3) are there certain economic forces that can explain environmental problems resulting from such recycling? EPA used these studies in developing our 2007 proposal.

**Timetable:**

Action	Date	FR Cite
NPRM	10/28/03	68 FR 61558
Supplemental NPRM	03/26/07	72 FR 14172
Final Action	07/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 4670.1; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-WASTE/2003/October/Day->

28/f26754.htm; Split from RIN 2050-AE98.

**URL For More Information:**

<http://www.epa.gov/epaoswer/hazwaste/dsw/index.htm>

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**RIN:** 2050-AG31

**EPA**

**156. NPDES PERMIT REQUIREMENTS FOR PEAK WET WEATHER DISCHARGES FROM PUBLICLY OWNED TREATMENT WORK TREATMENT PLANTS SERVING SANITARY SEWER COLLECTION SYSTEMS POLICY**

**Priority:**

Other Significant

**Legal Authority:**

33 USC 1311; 33 USC 1318; 33 USC 1342; 33 USC 1361

**CFR Citation:**

40 CFR 122.41(m)

**Legal Deadline:**

None

**Abstract:**

During periods of wet weather, wastewater flows received by municipal sewage treatment plants can significantly increase, which can create operational challenges for sewage treatment facilities. Where peak flows approach or exceed the design capacity of a treatment plant they can seriously reduce treatment efficiency or damage treatment units. In addition to hydraulic concerns, wastewater associated with peak flows may have low organic strength, which can also decrease treatment efficiencies. One engineering practice that some facilities use to protect biological treatment units from damage and to prevent overflows

and backups elsewhere in the system is referred to as wet weather blending. Wet weather blending occurs during peak wet weather flow events when flows that exceed the capacity of the biological units are routed around the biological units and blended with effluent from the biological units prior to discharge. Regulatory agencies, sewage treatment plant operators, and representatives of environmental advocacy groups have expressed uncertainty about National Pollutant Discharge Elimination System (NPDES) requirements addressing such situations. EPA requested public comment on a proposed policy published on November 7, 2003. Based on a review of all the information received, EPA has decided not to finalize the policy as proposed in November 2003. On December 22, 2005, EPA requested public comment on an alternative Peak Flows Policy that is significantly different than the 2003 draft policy.

**Statement of Need:**

Regulatory agencies, municipal operators of wastewater facilities, and representatives of environmental advocacy groups have expressed uncertainty about the appropriate regulatory interpretation for peak wet weather diversions at publicly owned treatment works (POTW) treatment plants serving separate sanitary sewer collection systems. This policy is needed to clarify NPDES permit requirements for such wet weather diversions and to ensure a comprehensive regulatory approach reduces peak wet diversions.

**Summary of Legal Basis:**

33 USC 1251 et seq.

**Alternatives:**

On November 7, 2003, EPA requested public comment on a proposed policy which would have provided an alternative regulatory interpretation. Under the proposed interpretation in the November 7, 2003 proposed policy, a wet weather diversion around biological treatment units that was blended with the wastewaters from the biological units prior to discharge would not have been considered to constitute a prohibited bypass if the six criteria specified in the November 7, 2003 proposed policy were met. EPA received significant public comment on the proposed policy, including over 98,000 comments opposing the policy due to concerns about human health risks. On May 19, 2005, EPA indicated that after consideration of the

comments, the Agency had no intention of finalizing the 2003 proposal. On July 26, 2005, Congress enacted the FY 2006 Department of the Interior, Environment, and Related Agencies Appropriations Act (Pub. L. 109-54). Section 203 of the Appropriations Act provides that none of the funds made available in the Act could be used to finalize, issue, implement or enforce the November 7, 2003 proposed blending policy. On December 22, 2005, EPA requested public comment on an alternative Peak Flows Policy that is significantly different than the 2003 draft policy.

**Anticipated Costs and Benefits:**

The costs and benefits associated with this policy have not been evaluated.

**Risks:**

The collection and treatment of municipal sewage and wastewater is vital to public health. During significant rain events, high volumes of water entering a sewage collection system can overwhelm the collection system or treatment plant. Operators of wastewater treatment plants must manage these high flows to both ensure the continued operation of the treatment process and to prevent backups and overflows of raw wastewater in basements or city streets. The proposed policy seeks to reduce public health risks by encouraging municipalities to make investments in ongoing maintenance and capital improvements to improve their system's long-term performance.

**Timetable:**

Action	Date	FR Cite
1st Draft Policy	11/07/03	68 FR 63042
2nd Draft Policy	12/22/05	70 FR 76013
Final Policy	03/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Local, State, Tribal

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 4690; EPA publication information: 2nd Draft Policy - <http://www.epa.gov/fedrgstr/EPA-WATER/2005/December/Day-22/w7696.htm>; EPA Docket information: EPA-HQ-OW-2005-0523

**Sectors Affected:**

22132 Sewage Treatment Facilities

**URL For More Information:**

[www.epa.gov/npdes](http://www.epa.gov/npdes)

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**RIN:** 2040-AD87

**EPA**

**157. CONCENTRATED ANIMAL FEEDING OPERATION RULE**

**Priority:**

Other Significant

**Legal Authority:**

CWA 301, 304, 306, 307, 308, 402, 501

**CFR Citation:**

40 CFR Part 122; 40 CFR Part 412

**Legal Deadline:**

None

**Abstract:**

This rulemaking is in response to the Second Circuit's February 28, 2005, decision in *Waterkeeper Alliance vs. EPA*, which vacated provisions in the Concentrated Animal Feeding Operations (CAFO) rule found at 40 CFR 412. Two vacatures from the case affect the 1) duty that all CAFOs need to apply for an NPDES permit, and 2) provisions that nutrient management plans (NMPs) need only be kept on-site. This rule would remove the duty to apply for all CAFOs and replace it with a requirement for CAFOs to apply for a permit if they discharge or propose to. The rule also would establish a process to address the court's concerns that the information within NMPs be available for public comment, reviewed by the permit authority, and incorporated into the permit. It is EPA's intention to make

only those changes necessary to address the issues raised by the court.

**Statement of Need:**

EPA is revising the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for concentrated animal feeding operations (CAFOs) in response to the decision issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance v. EPA*, 399 F.3d 486 (2nd Cir. 2005), which vacated certain aspects of the 2003 CAFO rule and remanded other aspects for clarification. This rule responds to the court's decision while furthering the statutory goal of restoring and maintaining the nation's water quality and effectively ensuring that CAFOs properly manage manure generated by their operations.

**Summary of Legal Basis:**

Congress passed the Federal Water Pollution Control Act (1972), also known as the Clean Water Act (CWA), to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" (33 U.S.C. 1251(a)). Among the core provisions, the CWA establishes the NPDES permit program to authorize and regulate the discharge of pollutants from point sources to waters of the U.S. 33 U.S.C. 1342. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term "point source." Section 502(12) defines the term "discharge of a pollutant" to mean "any addition of any pollutant to navigable waters from any point source" (emphasis added). EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR Part 122. The Act also provides for the development of technology-based and water quality-based effluent limitations that are imposed through NPDES permits to control the discharge of pollutants from point sources. CWA sections 301(a) and (b).

**Alternatives:**

Because this rulemaking is in response to the decision issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance v. EPA* vacating or remanding certain aspects of the 2003 CAFO rule, there are no non-regulatory options that would satisfy the requirements of the court.

**Anticipated Costs and Benefits:**

Since there is no change in technical requirements, changes in impacts on respondents are estimated to result exclusively from changes in the

information collection burden. EPA estimates that CAFOs will experience a net reduction in administrative burden of approximately \$15.4 million due to the court decision. At the same time, however, permitting authorities would have to bear a net \$0.5 million annual increase in administrative burden. In total, the administrative burden under the proposed rule is projected to decline to a total of approximately \$64 million annually for both regulated facilities and permit authorities, which constitutes a reduction of more than \$14.9 million compared to the 2003 CAFO rule.

**Risks:**

None

**Timetable:**

Action	Date	FR Cite
NPRM	06/30/06	71 FR37744
Final Action	01/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 4996; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-WATER/2006/June/Day-30/w5773.htm>;

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**RIN:** 2040-AE80

**EPA****158. WATER TRANSFERS RULE****Priority:**

Other Significant

**Legal Authority:**

33 USC 1251 et seq.

**CFR Citation:**

40 CFR 122.3

**Legal Deadline:**

None

**Abstract:**

This rulemaking addresses the question of whether the National Pollutant Discharge Elimination System (NPDES) permitting program under Section 402 of the Clean Water Act (CWA) is applicable to water control facilities that merely convey or connect navigable waters. For purposes of this action, the term "water transfer" refers to any activity that conveys or connects navigable waters (as that term is defined in the CWA) without subjecting the water to intervening industrial, municipal, or commercial use. This rulemaking focuses exclusively on water transfers and is not relevant to whether any other activity is subject to the CWA permitting requirement.

**Statement of Need:**

This rulemaking is needed to clarify that NPDES permits are generally not required for water transfers. In 2004, this question was presented before the Supreme Court in *South Florida Water Management District v. Miccosukee Tribe of Indians*. The Court declined to rule directly on the issue and remanded it back to the District Court for further deliberation, generating uncertainty among the potentially regulated community and other stakeholders.

**Summary of Legal Basis:**

33 USC 1251 et seq.

**Alternatives:**

On August 5, 2005, EPA issued a legal memorandum entitled "Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers." Based on the statute as a whole, this memo concluded that Congress generally intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the NPDES permitting program. The interpretive memo stated that the Agency would initiate a rulemaking to this effect. The issuance of a rulemaking will provide the greatest certainty for stakeholders.

**Anticipated Costs and Benefits:**

There are no costs and benefits associated with this rulemaking.

**Risks:**

There are no risks associated with this rulemaking.

**Timetable:**

Action	Date	FR Cite
NPRM	06/07/06	71 FR 32887
Final Action	01/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State

**Additional Information:**

SAN No. 5040; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-WATER/2006/June/Day-07/w8814.htm>; ; EPA Docket information: EPA-HQ-OW-2006-0141

**URL For More Information:**

[www.epa.gov/npdes/agriculture](http://www.epa.gov/npdes/agriculture)

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**RIN:** 2040-AE86

**EPA****159. IMPLEMENTATION GUIDANCE FOR MERCURY WATER QUALITY CRITERIA****Priority:**

Other Significant

**Legal Authority:**

33 USC 1251 et seq

**CFR Citation:**

None

**Legal Deadline:**

None



**Abstract:**

In the 2001 Federal Register notice of the availability of EPA's recommended water quality criterion for methylmercury, EPA stated that it would develop associated procedures and guidance for implementing the criterion. For states and authorized tribes exercising responsibility under CWA section 303(c), this document provides technical guidance on how they might want to use the recommended 2001 fish tissue-based criterion to develop and implement their own water quality standards for methylmercury. The guidance addresses topics including adoption and revision of standards, monitoring, waterbody assessment, water quality standards issues, TMDL development, and NPDES permitting. Since atmospheric deposition is considered to be a major source of mercury for many waterbodies, implementing this criterion involves coordination across media and program areas.

**Statement of Need:**

The methylmercury criterion is expressed as a fish and shellfish tissue value, and this raises both technical and programmatic implementation questions. Development of water

quality standards, NPDES permits, and TMDLs present challenges because these activities typically have been based on a water concentration (e.g., as a measure of mercury levels in effluent). This guidance addresses issues associated with states and authorized tribes adopting a fish tissue-based water quality criterion into their water quality standards programs and implementation of the revised water quality criterion in TMDLs and NPDES permits. Further, because atmospheric deposition serves as a large source of mercury for many waterbodies, implementation of the criterion involves coordination across media and program areas.

**Summary of Legal Basis:**

N/A

**Alternatives:**

N/A

**Anticipated Costs and Benefits:**

The costs and benefits associated with this guidance have not been evaluated.

**Risks:**

N/A

**Timetable:**

Action	Date	FR Cite
Final Document	01/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

State, Tribal

**Additional Information:**

SAN No. 5098; FDMS Docket number: Docket ID No. EPA-HQ-OW-2006-0656

**URL For More Information:**

<http://www.epa.gov/waterscience/criteria/methylmercury>

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**RIN:** 2040-AE87

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