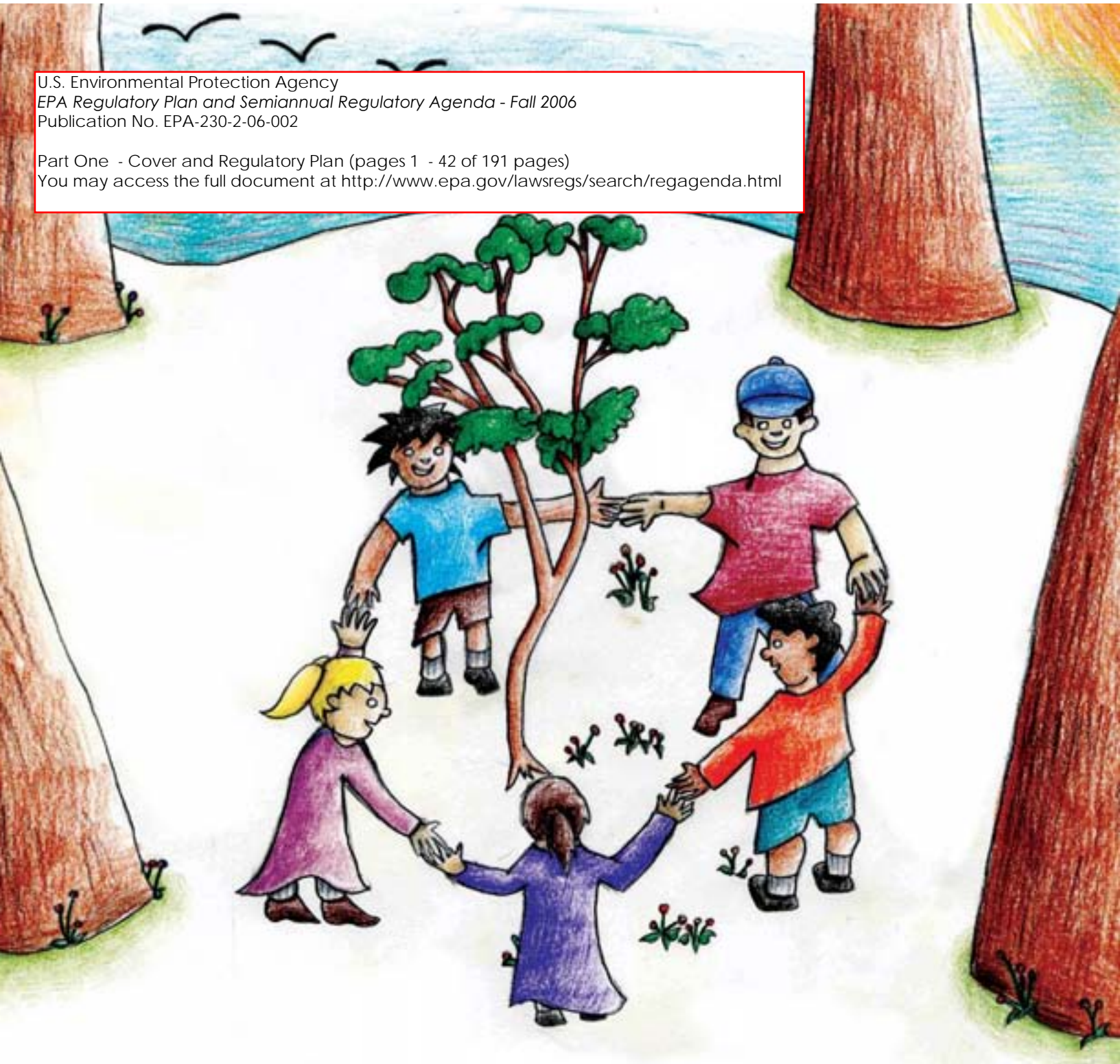




# Regulatory Plan and Semiannual Regulatory Agenda

U.S. Environmental Protection Agency  
*EPA Regulatory Plan and Semiannual Regulatory Agenda - Fall 2006*  
Publication No. EPA-230-2-06-002

Part One - Cover and Regulatory Plan (pages 1 - 42 of 191 pages)  
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**FALL 2006**

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# **Regulatory Plan and Semiannual Regulatory Agenda**

“At EPA, we believe that environmental responsibility is everyone’s responsibility. Together with an informed and involved public, we are meeting our duty of passing down a cleaner, healthier environment to future generations of Americans.”

– Administrator, Stephen L. Johnson



**United States  
Environmental Protection Agency**

**Office of Policy, Economic Innovation**

**EPA-230-2-06-002**

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# PLAN



## REGULATORY PLAN CONTENTS

### Part 1: Statement of Priorities

### Part 2: Actions Described in the Regulatory Plan

Sequence Number	Title	Regulation Identifier Number	Rulemaking Stage
98	Endocrine Disrupter Screening Program (EDSP); Implementing the Screening and Testing Phase	2070-AD61	Prerule Stage
99	Standards for the Management of Coal Combustion Wastes Generated by Commercial Electric Power Producers	2050-AE81	Prerule Stage
100	Review of the National Ambient Air Quality Standards for Carbon Monoxide	2060-AI43	Proposed Rule Stage
101	Control of Emissions From New Locomotives and New Marine Diesel Engines Less Than 30 Liters per Cylinder	2060-AM06	Proposed Rule Stage
102	Control of Emissions From Nonroad Spark-Ignition Engines and Equipment	2060-AM34	Proposed Rule Stage
103	Implementing Periodic Monitoring in Federal and State Operating Permit Programs	2060-AN00	Proposed Rule Stage
104	Review of the National Ambient Air Quality Standards for Ozone	2060-AN24	Proposed Rule Stage
105	Prevention of Significant Deterioration, Nonattainment New Source Review, and New Source Performance Standards: Emissions Test for Electric Generating Units	2060-AN28	Proposed Rule Stage
106	Review of the National Ambient Air Quality Standards for Lead	2060-AN83	Proposed Rule Stage
107	Test Rule; Testing of Certain High Production Volume (HPV) Chemicals	2070-AD16	Proposed Rule Stage
108	Pesticides; Competency Standards for Occupational Users	2070-AJ20	Proposed Rule Stage
109	Pesticides; Agricultural Worker Protection Standard Revisions	2070-AJ22	Proposed Rule Stage
110	Pesticide Agricultural Container Recycling Program	2070-AJ29	Proposed Rule Stage
111	Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule, 40 CFR Part 112	2050-AG16	Proposed Rule Stage
112	Expanding the Comparable Fuels Exclusion under RCRA	2050-AG24	Proposed Rule Stage
113	Definition of Solid Wastes Revisions	2050-AG31	Proposed Rule Stage
114	NESHAP: Hazardous Organic NESHAP (HON) Residual Risk Standards	2060-AK14	Final Rule Stage
115	NESHAP: Halogenated Solvent Cleaning—Residual Risk Standards	2060-AK22	Final Rule Stage
116	Control of Hazardous Air Pollutants From Mobile Sources	2060-AK70	Final Rule Stage
117	Clean Air Fine Particle Implementation Rule	2060-AK74	Final Rule Stage
118	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation and Project Netting	2060-AL75	Final Rule Stage
119	Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculation of Fuel Economy Estimates	2060-AN14	Final Rule Stage
120	Amendment of the Standards for Radioactive Waste Disposal in Yucca Mountain, Nevada	2060-AN15	Final Rule Stage

121	Renewable Fuels Standard Rule	2060-AN76	Final Rule Stage
122	Final Rule for Implementation of the New Source Review (NSR) Program for PM2.5	2060-AN86	Final Rule Stage
123	Pesticides; Data Requirements for Conventional Chemicals	2070-AC12	Final Rule Stage
124	Lead-Based Paint Activities; Amendments for Renovation, Repair, and Painting	2070-AC83	Final Rule Stage
125	Pesticides; Data Requirements for Biochemical and Microbial Products	2070-AD51	Final Rule Stage
126	Notification of Chemical Exports under TSCA Section 12(b)	2070-AJ01	Final Rule Stage
127	Testing Agreement for Perfluorooctanoic Acid (PFOA)	2070-AJ06	Final Rule Stage
128	Hazardous Waste Manifest Revisions-Standards and Procedures for Electronic Manifests	2050-AG20	Final Rule Stage
129	Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Requirements — Amendments	2050-AG23	Final Rule Stage
130	National Pollutant Discharge Elimination System Permit Requirements for Peak Wet Weather Discharges from Publicly Owned Treatment Work Treatment Plants Serving Sanitary Sewer Collection Systems Policy	2040-AD87	Final Rule Stage
131	Concentrated Animal Feeding Operation Rule	2040-AE80	Final Rule Stage
132	Water Transfers Rule	2040-AE86	Final Rule Stage
133	Implementation Guidance for Mercury Water Quality Criteria	2040-AE87	Final Rule Stage
134	Toxics Release Inventory Reporting Burden Reduction Rule	2025-AA14	Final Rule Stage

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

### Statement of Priorities

#### OVERVIEW

The United States Environmental Protection Agency (EPA) is the primary Federal agency charged with safeguarding the quality of the natural environment and protecting human health from deleterious pollutants. For over 35 years, the Agency has been working to provide improvements in cleaner air, purer water, and better-protected land. The actions taken by EPA have led to measurable improvement in air and water quality, significant reductions in solid and hazardous wastes, and limitations on the use of harmful chemicals and pesticides.

Between 1970 and 2004, total emissions of the six major air pollutants dropped by 54 percent. This is particularly impressive when noted that the gross domestic product increased 187 percent, energy consumption increased 47 percent, and U.S. population grew by 40 percent during the same time. Through land restoration efforts, 600,000 acres of contaminated land now provide ecological, economic, and recreational benefits. In 2004, EPA and its partners took action to restore, enhance, and protect nearly 830,000 acres of wetlands. EPA continues to build on its past success by using regulatory and innovative approaches to achieve effective results. In doing so, the Agency uses three guiding principles to govern its work to maintain the strongest level of environmental protection.

#### Results and Accountability

In order to be an effective steward in protecting the environment and responsive to national priorities, EPA uses tools aimed at achieving results and demonstrating accountability. To this end, the Agency uses transparent management tools and measures to provide the public with results as efficiently and effectively as possible. EPA continues to vigorously enforce environmental laws using both compliance assistance and strong enforcement programs. This is a key focus of the resident's Management Agenda, which is designed to make Government citizen-centered, results-oriented, and market-based.

#### Innovation and Collaboration

In facing complex environmental challenges, the Agency values new strategic approaches. By collaborating

with other Federal, State, tribal, and local governments and engaging private-sector entities, stakeholders, and the public, the Agency aims to solve problems using innovative methods that go beyond conventional regulatory controls. The expertise, perspectives, and resources of EPA's partners allow it to foster new approaches and develop new initiatives to expand environmental protection.

#### Best Available Science

EPA maintains its commitment to sound science and uses the best information available in decisionmaking while anticipating potential environmental threats, evaluating risks, identifying solutions, and developing protective standards. It is crucial to the success of the Agency to respond to emerging information in order to gain new understanding, reduce uncertainties, and, if necessary, change approaches concerning how they should be addressed.

#### Accelerating Environmental Protection

Using these principles as its framework, EPA is focused on accelerating environmental protection while maintaining the nation's economic competitiveness. Part of this focus centers on maintaining and supporting successful measures already taken.

*Cleaner air and affordable energy:* Since 1970, EPA has been working to provide cleaner, healthier air to all Americans by collaborating with partners and stakeholders to implement the Clean Air Act and subsequent amendments. The Agency's strategy for protecting human health relies on national regulatory, voluntary, and market-based programs carried out in combination with State, tribal, and local efforts. For example, the Agency is currently seeking to expand the use of biofuels and promote diesel emission reductions. Meanwhile, EPA promotes clean air and energy security through voluntary conservation programs like Energy Star and SmartWay transport. Additionally, the Agency will continue to make timely permitting decisions and foster technological innovations to support the clean development of domestic energy resources.

*Clean and safe water:* The EPA and its state, tribal, and local partners have made significant improvements in protecting and restoring the nation's waters. The Agency's goals, stemming from the Clean Water Act and the Safe Drinking Water Act, include the improvement of the quality of drinking

water, and the protection and restoration of waters and beaches for fishing, swimming, and recreation. The importance of safe drinking water supplies was never more evident than in the aftermath of Hurricane Katrina. The strength of the Agency's initiative was evident as EPA, State, and local officials, systems operators, and volunteers dedicated their efforts around the clock to assist affected communities in repairing the infrastructure of drinking water systems and restoring sources of safe drinking water. EPA will continue to develop innovative, market-based, and sustainable solutions for water infrastructure financing and management while advancing regional collaborations for the Chesapeake Bay, Great Lakes, and Gulf of Mexico and working on restoring and protecting America's wetlands and watersheds.

*Healthy communities and ecosystems:* In keeping with its role of stewardship in an ever-changing global environment and working in service to both human health and the quality of the environment, EPA will continue efforts to improve communities by restoring contaminated properties, including brownfields, to environmental and economic vitality and encouraging voluntary community clean-up of potentially dangerous abandoned mine sites. These efforts will be paired with the promotion of community-level activities through increased resource conservation, including waste minimization through source reduction and recycling.

*Global environment:* As the EPA works to improve its role as steward to local communities, it serves as a participant in global activity to protect and restore the shared resources and the environment. To that end, the Agency is dedicated to finding solutions to issues that have far-reaching, global implications. EPA strives to promote energy security, and simultaneously advances international collaboration on environmental issues, such as reduction of air pollution and greenhouse gas emissions. The means to achieving these results include agreements like the Asia-Pacific Partnership on Clean Development and the Methane-to-Market Partnership.

*Stronger EPA:* As the Agency continues to uphold the President's Management Agenda, it could not ensure its success without a diverse, talented, and highly-skilled workforce. Equipped with the energy, intensity, and vitality of its professional staff, EPA is better able to devote prevention,

preparedness, and research efforts toward national security and respond to natural disasters.

### Rules Expected to Impact Small Entities

EPA continues to focus on implementing its Small Business Strategy. 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 may be of particular interest to small businesses (and for a more extensive list of rules affecting small businesses, please see appendices B and C to the Regulatory Agenda which is available at [www.epa.gov/regagenda](http://www.epa.gov/regagenda)). The priority items that are expected to have a significant impact on a substantial number of small entities include:

Control of Hazardous Air Pollutants from Mobile Sources (2060-AK70)

Control of Emissions from Spark-Ignition Engines and Fuel Systems from Marine Vessels and Small Equipment (2060-AM34)

Lead-Based Paint Activities; Amendments for Renovation, Repair and Painting (2070-AC83)

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. 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*

A principal regulatory priority of EPA's Office of Air and Radiation (OAR) in 2006 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.

To help control ozone and particulate pollution, OAR continues to develop rules as part of its program to reduce emissions from mobile sources. These rules will require additional emission reductions from certain marine vessels, locomotives, and small equipment, and will add requirements for fuel economy labeling and renewable-fuel content in gasoline. 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.

Even though these Federal rules will go a long way toward reducing the ozone and particulate pollution in America's cities, they can't do the job alone. Additional state and local control programs under the Clean Air Act will need to be instituted or enhanced in many of the most polluted areas. To help and guide the States and local governments in these efforts, EPA has been developing implementation rulemakings for both ozone and particulates that will provide technical help and policy guidance crucial to assuring that State and local efforts achieve their pollution-control goals. The ozone implementation rule was finalized last year; the particulate implementation rule will be finalized this fall.

OAR also continues to assess new scientific information that underlies the National Ambient Air Quality Standards (NAAQS), which are the centerpiece of the Clean Air Act and the foundation of OAR's program. In October, EPA promulgated a rule revising the existing NAAQS for particulates. A rule to either revise or reaffirm the current ozone NAAQS will be proposed and promulgated in 2007. Rules addressing

lead and carbon monoxide will follow in 2008 and 2009, respectively.

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 entering its second phase consisting of evaluation of the effectiveness of work done so far, and assessment of the need for additional controls. Rulemakings are currently underway covering industries dealing with hazardous organic chemical production and halogenated solvent cleaning. We are also developing a rulemaking requiring additional reductions in toxic emissions from mobile sources such as cars and trucks.

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 a rulemaking to clarify and better define the kinds of monitoring required in Federal and State operating permit programs.

In 2006, 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 Environmental Information*

EPA's Office of Environmental Information (OEI) ensures that EPA collects and provides access to high quality environmental information and data to our partners, stakeholders, and the public. In keeping with this mandate, one of OEI's top regulatory priorities will be the finalization of the Toxics Release Inventory (TRI) Burden Reduction Rule.

The TRI program collects chemical release and other waste management data on over 650 chemicals from over 24,000 facilities across the U.S. each year. To provide TRI reporters with appropriate burden relief, EPA initiated two rulemakings to address both short-term and longer-term reporting requirement modifications while maintaining the practical utility of the TRI data. The TRI Reporting Forms Modification Rule, which addressed relatively minor modifications to the TRI reporting forms, was published in the Federal Register on July 12, 2005 (70 FR 39931). TRI continued its efforts to reduce the TRI reporting burden and published the TRI Burden Reduction Proposed Rule in October 2005 (70 FR 57822). The second regulatory proposal examines more significant reporting modifications with greater potential impact on reporting burden. The TRI Burden Reduction Rule offers burden reduction options that are technically, practically and legally feasible in order to meet the goals and statutory obligations set forth for TRI reporting. The rule will reduce burden associated with TRI reporting while maintaining EPA's commitment to providing valuable information to the public.

Through the Central Data Exchange (CDX) system, EPA is also committed to providing electronic access to its stakeholders to meet EPA's reporting requirements. CDX is an integrated system that provides electronic reporting services to more than 30,000 users for 16 data flows in six major EPA media programs. CDX is on track to provide electronic reporting services for all significant environmental data collections over the next two years. CDX enables EPA and participating program offices to work with stakeholders - including State, tribal and local governments and regulated industries - to enable streamlined, electronic submission of data via the Internet.

By enabling the regulated community to utilize CDX as a reporting tool, the TRI Program received about 60% of its submissions on line for Reporting Year (RY) 2005. To take advantage of CDX's paperless reporting feature, TRI

reporters must use the EPA-provided TRI Made-Easy (TRI-ME) Software. For RY 2005, over 95 percent of all facilities used TRI-ME to prepare their reports. This reflects an upward trend toward greater Internet reporting via CDX and is great news for the TRI program. Money saved from processing more-costly hard-copy paper submissions to TRI can now be reinvested in helpful tools and automated data quality checks to assist facilities and provide greater electronic means of accessing TRI data.

Over the past several years, CDX also added a number of new data flows, including the Office of Water's Stormwater Electronic Notice of Intent (an electronic permit application), the Office of Solid Waste and Emergency Response's Risk Management Plan WebRC (electronic updates of emergency contact information), and the Office of Prevention, Pesticides, and Toxic Substances' Lead Request for Certification (payment transactions online).

CDX is EPA's point of presence on the Environmental Exchange Network, known as the "Node." Using CDX, EPA has worked with States to provide the technical specifications and exchange protocols for the Network. CDX provides support services, including node building, security and authentication and help desk. OEI is working with the major programs to deploy their data flows as "node" exchanges, using XML and web services. These efforts are some examples of EPA's commitment to the collection and dissemination of the highest quality of environmental information.

### *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 late 2006 EPA will complete a 10-year review of food-use pesticides, as mandated by the Food Quality Protection Act of 1996 (FQPA). The changes in pesticide use patterns resulting from this review have included outright phase-out of hundreds of pesticides, elimination of certain uses, stricter use provisions, and establishment of food tolerances. Americans today can be confident that pesticides used in the United States meet the highest health and safety standards.

Associated with this review of food-use chemicals, early in 2006, EPA issued a final rule that significantly strengthened and expanded the protections for participants in environmental research in three ways. The rule categorically banned intentional dosing human testing for pesticides when the subjects are pregnant women, nursing women or children. The rule also formalized and further strengthened existing protections for subjects in human research conducted or supported by EPA, as well as to intentional dosing human studies for pesticides conducted by others who intend to submit the research to EPA. This action assures that the best available, ethically sound science is used in our decisionmaking processes.

To ensure that pesticides are continuously reviewed against the latest health and safety standards, in August of 2006, OPPTS began implementing a new program, mandated by section 3(g) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to review the registrations of all pesticides at least once each 15 years. The registration review program will replace the tolerance reassessment program in 2006 and reregistration program in 2008.

Also in 2006, EPA published a final rule to revise the regulations governing emergency exemptions that allow unregistered uses of pesticides to address emergency pest conditions for a limited time. These revisions reduced the burden to both applicants and EPA, provided for consistent determinations of "significant economic loss" as the basis for an emergency, and updated and clarified the regulations to be consistent with the requirements of FQPA. As a result, the final rule is expected to allow EPA to respond to these emergencies more quickly without compromising existing protections for human health and the environment.

In 2007, EPA will continue its work towards the Administration goal of eliminating childhood lead poisoning as



a national health concern by 2010 by developing a comprehensive program for the management of renovation, repair and painting activities involving lead-based paint hazards. The program will be comprised of a combination of approaches including an extensive education and outreach campaign for lead-safe work practices and training for industry, an outreach campaign designed to expand consumer awareness and create demand for the use of lead-safe work practices, and the establishment of final regulatory requirements. As a part of this effort, EPA issued a proposed rule on January 10, 2006, that would minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair, and painting activities in most housing built before 1978 by requiring that all persons and firms who conduct such work for compensation follow lead-safe work practice standards and be trained and certified in the use of lead-safe work practices, and that providers of renovation training be accredited.

In 2006 and 2007, EPA will continue working collaboratively with stakeholders to better understand the sources and exposure pathways leading to the presence of PFOA in humans and the environment. EPA works with multiple parties to produce missing information on PFOA through enforceable consent agreements, memoranda of understanding, and voluntary commitments, continues to provide data to help answer many important questions about these chemicals. PFOA or perfluorooctanoic acid, a synthetic (man-made) chemical that does not occur naturally in the environment, is used to make fluoropolymers, substances with special properties that have thousands of important manufacturing and industrial applications. Consumer products made with fluoropolymers include non-stick cookware, and breathable, all-weather clothing. EPA began its investigation because PFOA is persistent in the environment and was being found at very low levels both in the environment and in the blood of the general U.S. population. EPA summarized its concerns and identified data gaps and uncertainties about PFOA in a notice published in the Federal Register on April 16, 2003.

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 issue a second proposed test rule under the Toxic Substances Control Act (TSCA) in early 2007 that will require testing for a number of the 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 information about exposure and uses, the information developed will allow the Agency and others to evaluate potential health and environmental risks, and take appropriate actions.

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 basis for the pesticide risk assessments and decisions as to whether pesticides meet the safety standards. Although the Agency has kept pace with evolving scientific understanding of pesticide risks by requiring the submission of the data needed on a case-by-case basis, OPPTS expects to issue final rules in 2007 that update the data requirements for biochemical, microbial, and conventional chemical pesticides to formally reflect evolving data needs. EPA also intends to propose in 2007 additional data requirements for antimicrobial pesticides and plant-incorporated protectants.

To update and strengthen the protections for pesticide applicators and agricultural workers, in late 2007, OPPTS expects to propose changes to the Federal regulations for the certified pesticide applicator program (CPAP). Many changes in State programs have occurred since the CPAP regulations were promulgated in the 1970s, such that State 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 to include additional occupational users, and strengthen the demonstration of competency as a requirement of certification. In conjunction with the applicator certification improvements, OPPTS will also propose improvements to the agricultural worker protection program in a separate but related proposed rule. The Agency expects these changes will strengthen the regulations to better protect pesticide applicators,

agricultural workers, the public, and the environment.

To further waste minimization and recycling goals, OPPTS intends to propose that manufacturers of agricultural and professional specialty pesticides support pesticide container recycling by either managing and operating their own programs, or contracting with a recycling organization. This proposal is intended to bolster current voluntary programs that have demonstrated that pesticide containers can be safely and efficiently recycled.

Evidence suggests that environmental exposure to man-made chemicals that mimic hormones (endocrine disruptors) may 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 may have effects similar to those produced by naturally occurring hormones. As part of this program EPA is also designing a framework for procedures and processes to use when implementing the EDSP, and will develop an initial list of chemicals for which testing will be required. In 2007, EPA anticipates publishing the preliminary procedures for use in implementing the screening and testing phase of the EDSP.

In response to comments submitted to OMB as part of OMB's Regulatory Reform of the U.S. Manufacturing Sector (2005) report, EPA issued a proposed rule on February 9, 2006, to streamline the TSCA section 12(b) export notification requirement in terms of the exporter's activities, as well as streamlining the Agency's procedures to notify foreign governments. OPPTS also proposed to eliminate reporting for de minimis concentration levels and proposed other improvement to the export notification regulations. EPA expects to issue a final rule early in FY2007.

In addition, in response to another comment submitted to OMB as part of OMB's Regulatory Reform of the U.S. Manufacturing Sector (2005) Report, about the use of mercury-containing

switches in convenience lights and braking systems installed in new cars, EPA proposed a TSCA Section 5 Significant New Use Rule (SNUR) on July 11, 2006, to ensure that the Agency is notified and provided the opportunity to evaluate and, if necessary, to prohibit or limit the use of mercury in automobiles switches before U.S. manufacture, import or processing occurs for that purpose in order to prevent unreasonable risk of injury to human health or the environment. EPA expects to finalize this SNUR in 2007.

#### *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 these missions in partnership with other Federal agencies, States, tribes, local governments, communities, nongovernmental organizations, and the private sector. To further these missions, 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 considering expanding the comparable fuels program. This program currently allows specific industrial wastes to be excluded from the Resource Conservation and Recovery Act (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. If EPA is successful in finding additional industrial wastes that could be used safely for their energy value without the expense of a RCRA permit, it would promote the use of these industrial wastes as a renewable domestic source of energy and reduce our use of fossil fuels. It also could significantly reduce the cost of recovering the energy from some hazardous wastes already used as fuels.

The "definition of solid waste" determines the recyclable secondary materials that are regulated under the RCRA hazardous waste regulations and those that are not. The RCRA regulatory definition of solid waste classifies

recyclable hazardous secondary materials as either regulated hazardous wastes or unregulated materials. Many materials that are 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 considering innovative approaches that will increase the safe recycling of hazardous waste, while still ensuring that these materials are properly handled.

EPA is continuing its pursuit to improve and modernize the hazardous waste tracking system by developing an "e-manifest." This system will allow electronic processing of hazardous waste transactions that will greatly enhance tracking capabilities, while significantly reducing administrative burden and costs for governments and the regulated community. The e-manifest will build on the new standardized manifest form that took effect in September 2006, and will ensure the continued safe management of hazardous waste.

EPA is seeking to amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the burden imposed on the regulated community for complying with the SPCC requirements, while maintaining protection of human health and the environment.

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. All the rulemakings mentioned above support reform nominations. In addition, two additional rulemakings under development also pertain to the reform nominations: (1) a rule to streamline laboratory waste management in academic and research laboratories and (2) a rule to manage the cement kiln dust, a by-product of the cement manufacturing process. The Agency is developing final rules for both these efforts. For the former rule, the Agency proposed a set of alternative standards that are more tailored to the way laboratories operate. The goal is to further protect human health and the environment through application of RCRA standards that are harmonious with the way laboratories operate. For the latter rule, the Agency proposed a comprehensive set of standards for the management of cement kiln dust. The

goal is to encourage the additional reuse and safer management of chemicals in laboratories, while continuing to protect human health and the environment.

#### *Office of Water*

EPA's Office of Water's (OW) primary goals are to ensure that drinking water is safe; to restore and maintain oceans, watersheds, and their aquatic ecosystems to protect human health; to support economic and recreational activities; and to 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 rules affecting National Pollutant Discharge Elimination System permit requirements.

OW is planning to finalize three 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). This final rule will respond 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 will finalize the proposed rule which amends the Clean Water Act regulations to clarify that NPDES permits are not required for water transfers. Lastly, EPA also plans to issue 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.

EPA

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#### PRERULE STAGE

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#### **98. ENDOCRINE DISRUPTER 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:**

Not Yet Determined

**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 is providing 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 a September 2005 Federal Register Notice (70 FR 56449) and EPA is implementing that approach. For establishing the testing orders and related data procedures, EPA intends to focus on the initial 50-100 chemicals. The agency intends to conduct a review of the data received from the screening of the initial group of chemicals to evaluate whether the program could be improved or optimized, and if so, how.

**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 U.S.C. 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 Fed. Reg. 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 Cost 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
Notice	12/00/06	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 4728; EPA publication information: 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:**

[www.epa.gov/scipoly/oscpendo/index.htm\\*COM001](http://www.epa.gov/scipoly/oscpendo/index.htm*COM001)

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**RIN:** 2070-AD61

**EPA**

**99. STANDARDS FOR THE  
MANAGEMENT OF COAL  
COMBUSTION WASTES GENERATED  
BY COMMERCIAL ELECTRIC POWER  
PRODUCERS**

**Priority:**

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

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 USC 6907(a)(3); 42 USC 6944(a)

**CFR Citation:**

40 CFR 257

**Legal Deadline:**

None

**Abstract:**

This action is for the development of non-hazardous waste regulations under subtitle D of the RCRA statute. The regulations will apply to landfill and surface impoundment facilities that manage coal combustion wastes generated by steam electric power generators, i.e., electric utilities and independent power producers. This action results from EPA's regulatory determination for fossil fuel combustion wastes (see 65 FR 32214, May 22, 2000), which concluded that waste management regulations under RCRA are appropriate for certain coal combustion wastes. The intended benefits of this action will be to prevent contamination or damage to ground waters and surface waters, thereby avoiding risk to human health and the

environment, including ecological risks. The Agency is currently analyzing the human health and eco risks, costs, and economic impact of this action as it develops the proposed regulation. The Agency has considered alternatives to this action, including regulating these wastes as hazardous wastes under subtitle C of RCRA, but has rejected this approach as discussed in the regulatory determination (see 65 FR 32214, May 22, 2000). EPA has also considered issuing guidance instead of regulations to industry and State and local governments to focus on these remaining waste management issues, particularly since the industry has improved its waste management practices and most State regulatory programs are similarly improving. To this end, the Agency will be issuing a Notice of Data Availability (NODA) announcing the availability for public inspection and comment on new information and data on the management of coal combustion wastes that the Agency will consider in deciding next steps in this effort.

**Statement of Need:**

The Agency is in the process of developing non-hazardous waste regulations under RCRA Subtitle D for the management of coal combustion wastes in landfills and surface impoundments. The Agency found that in 1995, liners were installed in only 57% of landfills and 26% of surface impoundments. Additionally, while 85% of landfills practiced groundwater monitoring, only 38% of surface impoundments did so. EPA is concerned that the lack of liners and groundwater monitoring could pose risks to human health and the environment.

**Summary of Legal Basis:**

RCRA Section 8002

**Alternatives:**

The Agency has considered alternatives to this action, including regulating these wastes as hazardous wastes under subtitle C of RCRA, but has rejected this approach as discussed in the regulatory determination (see 65 FR 32214, May 22, 2000). EPA has also considered issuing guidance instead of regulations to industry and State and local governments to focus on these remaining waste management issues.

**Anticipated Cost and Benefits:**

In the May 2000 regulatory determination the Agency stated that the decision to develop non-hazardous waste regulations for coal combustion

wastes is a "significant regulatory action." The benefits of the action will be reduced risks to human health and the environment.

**Risks:**

Risks posed by the mismanagement of coal combustion wastes include contamination of groundwater and surface water from metals, such as arsenic, boron, cadmium, and selenium.

**Timetable:**

Action	Date	FR Cite
NODA	12/00/06	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Federal, Local, State, Tribal

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 4470; This effort may also impact Federal, State, local or tribal governments that own coal-burning commercial electric power generating facilities.

**Sectors Affected:**

221112 Fossil Fuel Electric Power Generation

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**RIN:** 2050-AE81

**EPA**

**PROPOSED RULE STAGE**

**100. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

Final, Statutory, May 31, 2001, Clean Air Act requires reviews every 5 years.

**Abstract:**

Review of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) every 5 years is mandated by the Clean Air Act. This review assesses the available scientific data about the health and environmental effects of CO and translates the science into terms that can be used in making recommendations about whether or how the standards should be changed. The last review of the CO NAAQS was completed in 1994 with a final decision that revisions were not appropriate at that time.

**Statement of Need:**

As new health research becomes available on the effects of carbon monoxide, the Clean Air Act requires EPA to review the adequacy of the existing NAAQS at 5-year intervals.

**Summary of Legal Basis:**

The Clean Air Act requires review and revision of the NAAQS every five years.

**Alternatives:**

Alternatives for revising or maintaining the NAAQS will be assessed at a later point in the review cycle, after the scientific assessment of risk is completed.

**Anticipated Cost and Benefits:**

Costs and benefits will be evaluated later in the review cycle.

**Risks:**

Risk information will be available later in the review cycle.

**Timetable:**

Action	Date	FR Cite
NPRM	01/00/09	
Final Action	11/00/09	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

**Additional Information:**

SAN No. 4266

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**RIN:** 2060-AI43

**EPA**

**101. 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 7522-7621

**CFR Citation:**

40 CFR 92; 40 CFR 94

**Legal Deadline:**

None

**Abstract:**

Emissions from locomotive and marine diesel engines contribute significantly to unhealthful levels of ambient particulate matter and ozone in many parts of the United States. These engines are highly mobile and are not easily controlled at a State or local level. EPA currently regulates the manufacturers of these engines when

they are produced or remanufactured at a level similar to early 1990s on-highway diesel trucks. This rulemaking will propose to set an additional tier of more stringent particulate matter and nitrogen oxides emission standards for new marine diesel engines below 30 liters per cylinder (Category 1 and Category 2 marine diesel engines) and new locomotive engines. The standards under consideration are expected to be based on the use of high-efficiency aftertreatment technologies like those that will be used to meet EPA's recent heavy-duty and nonroad diesel standards. These technologies, which could reduce emissions by 90 percent, would be enabled by the availability and use of low sulfur diesel fuel.

**Statement of Need:**

Further reductions in nitrogen oxide (NOx) and particulate emissions are needed to help States attain national air-quality standards for particulates and for ozone, for which NOx is a precursor.

**Summary of Legal Basis:**

42 USC 7547

**Alternatives:**

Alternatives will be developed as the rulemaking proceeds. We recently issued an Advanced Notice of Proposed Rulemaking to gather ideas and comments from the interested public.

**Anticipated Cost and Benefits:**

Cost and benefit information will be developed as the rulemaking proceeds.

**Risks:**

The risks addressed by this rule are primarily those resulting from exposure to particulate matter and ozone. Risk information will be quantified as the rulemaking proceeds.

**Timetable:**

Action	Date	FR Cite
ANPRM	06/29/04	69 FR 39276
NPRM	05/00/07	
Final Action	05/00/08	

**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****102. CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AND EQUIPMENT****Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7521-7601(a)

**CFR Citation:**

40 CFR 90

**Legal Deadline:**

NPRM, Statutory, December 1, 2004.  
Final, Statutory, December 31, 2005.

**Abstract:**

In this action, we are proposing exhaust emission standards for spark-ignition marine engines and small land-based engines (<19 kW). We are also proposing evaporative emission standards for vessels and equipment using these engines. Nationwide, these emission sources contribute to ozone, carbon monoxide (CO), and particulate matter (PM) nonattainment. These pollutants cause a range of adverse health effects, especially in terms of respiratory impairment and related illnesses. The proposed standards would help States achieve and maintain air quality standards. In addition, these standards would help reduce acute exposure to CO, air toxics, and PM.

**Statement of Need:**

EPA has been directed by Congress to set new emission requirements for small spark-ignition (gasoline) engines. The Agency has previously acted to set standards for these nonroad engine source categories as there are significant health and welfare benefits associated with such controls. Even with existing standards, these sources continue to be contributors to air pollution inventories and further reductions will be helpful to State and local governments and tribes in their development of National Ambient Air Quality Standards plans.

**Summary of Legal Basis:**

Section 213 of the Clean Air Act gives EPA authority to set emissions requirements for nonroad engines. The engines covered under this proposed rulemaking are all considered nonroad engines. California may set its own emissions standards - unlike other mobile source categories, states are prohibited from adopting California emission standards for small spark ignition engines below 50 horsepower.

**Alternatives:**

A range of alternatives for the various exhaust and evaporative emissions standards is being discussed as part of the rulemaking development process. Alternatives include more stringent standards and different time frames for adopting the new requirements.

**Anticipated Cost and Benefits:**

There are potential significant health and welfare benefits associated with additional emissions control requirements for small spark-ignition engines. New standards can potentially achieve reductions in VOC emissions as well as other pollutants. Costs and benefits will be quantified and reported as part of the rulemaking process.

**Risks:**

Impacts of the proposed standards on health indicators will be discussed as part of the rulemaking development.

**Timetable:**

Action	Date	FR Cite
NPRM	02/00/07	
Final Action	11/00/07	

**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****103. IMPLEMENTING PERIODIC MONITORING IN FEDERAL AND STATE OPERATING PERMIT PROGRAMS****Priority:**

Other Significant

**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. 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. section 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. section 7661c(a).

**Alternatives:**

Some existing monitoring required under applicable requirements could be improved and will be addressed in connection with both the upcoming PM2.5 implementation rulemaking and by improving monitoring in certain Federal rules or monitoring in SIP rules not addressed in connection with the PM2.5 implementation guidance or rulemaking over a longer time frame.

**Anticipated Cost 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	06/00/07	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State, Local, Tribal

**Additional Information:**

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

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**RIN:** 2060-AN00

**EPA**

**104. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 7408; 42 USC7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

Final, Statutory, July 18, 2002, CAA Amendments of 1977.

NPRM, Judicial, March 28, 2007, Consent Decree.

Final, Judicial, December 19, 2007, 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 and Staff Paper will be reviewed by the Clean Air Scientific Advisory Committee and the public, and both final documents will reflect the input received through these reviews. 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 Cost and Benefits:

Costs and benefits of revising or reaffirming the national ambient air quality standards for ozone cannot be determined at present; a regulatory impact analysis will be conducted along with the review of the standards.

#### 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	03/00/07	
Final Action	12/00/07	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

Federal, State, Local, Tribal

#### Additional Information:

SAN No. 5008

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RIN: 2060-AN24

#### EPA

#### 105. PREVENTION OF SIGNIFICANT DETERIORATION, NONATTAINMENT NEW SOURCE REVIEW, AND NEW SOURCE PERFORMANCE STANDARDS: EMISSIONS TEST 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 Part 51; 40 CFR Part 52

#### Legal Deadline:

None

#### Abstract:

This rulemaking would create a revised 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). This revised emissions test would be available for EGUs that are also subject to the EPA-administered Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Annual Trading Program or the CAIR SO<sub>2</sub> Trading Program. This emissions test could be extended to other CAIR and non-CAIR EGUs. For existing major stationary sources, the NSR base program emissions test is applied when the source proposes to modify an emissions unit such that the change is a physical change or change in the method of operation, and the 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 will be either a maximum achieved and maximum achievable hourly emissions, measured on an input or an output basis. The supplemental notice will include proposed regulatory language for the maximum achieved and achievable options (input and output basis for each). The supplemental notice will also include data, information, and analyses concerning the impacts of the proposed options. The supplemental notice will also include an option in which the current regulations (annual emissions test) are retained, but the baseline period is extended from 5 to 10 years.

#### 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. We request



comment on alternative bases for an alternative applicability test.

**Anticipated Cost and Benefits:**

Cost and benefit information will be developed as appropriate, as the rulemaking proceeds.

**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	12/00/06	
Final Action	04/00/07	

**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/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**

**106. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR LEAD**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

Undetermined

**Legal Authority:**

42 USC 7408; 42 USC 7409

**CFR Citation:**

40 CFR 50

**Legal Deadline:**

Final, Judicial, September 1, 2008, Court-ordered schedule.

**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/m3 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 will prepare a Staff Paper for the Administrator, which will evaluate the policy implications of the key studies and scientific information contained in the AQCD and additional technical analyses, and identify critical elements that EPA staff believe should be considered in reviewing the standards. The AQCD and Staff Paper will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public, and both final documents will reflect the input received through these reviews. 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 Cost and Benefits:**

Costs and benefits of revising or reaffirming the national ambient air quality standards for lead cannot be determined at present; a regulatory analysis will be conducted along with the review of the standards.

**Risks:**

The current national ambient air quality standards for lead are intended to protect against public health risks associated with neurological effects in children and cardiovascular effects in adult males. 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
NPRM	02/00/08	
Final Action	09/00/08	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Undetermined

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 5059

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RIN: 2060-AN83

**EPA****107. TEST RULE; TESTING OF CERTAIN HIGH PRODUCTION VOLUME (HPV) CHEMICALS****Priority:**

Other Significant

**Legal Authority:**

15 USC 2603

**CFR Citation:**

40 CFR 790 - 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 2007 will require similar screening level testing for other unsponsored HPV Challenge Program chemicals.

**Statement of Need:**

EPA has 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% have 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% have no publicly available basic hazard data. For the remaining chemicals, limited amounts of the data are available. This lack of available hazard data compromises EPA's and others' ability 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. It is EPA's intent to close this knowledge gap. EPA believes that for most of the HPV chemicals, insufficient data are readily available to reasonably determine or predict the effects on health or the environment from the manufacture (including importation), distribution in commerce, processing, use, or disposal of the chemicals, or any combination of these activities. EPA has concluded that a program to collect and, where needed, develop basic screening level toxicity data is necessary and appropriate to provide information in order to assess the potential hazards/risks that may be posed by exposure to HPV chemicals. On April 21, 1998, a national initiative, known as the "Chemical Right-To-Know" Initiative, was announced in order to empower citizens with knowledge about the most widespread chemicals in commerce—chemicals that people may be exposed to in the places where they live, work, study, and play. A primary component of EPA's Chemical Right-To-Know (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 of HPV

chemicals while avoiding unnecessary or duplicative testing. Data needs which remain unmet in the voluntary HPV Challenge Program, may be addressed through the international efforts or rulemaking.

**Summary of Legal Basis:**

These test rules will 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 Cost and Benefits:**

The potential benefits of these test rules are substantial, as no one — whether in industry, government, or the public — can make reasoned risk management decisions in the absence of reliable health and environmental information. The cost of the baseline screening testing that would be imposed is estimated to be about \$200,000 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
Second NPRM	09/00/07	

**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**

**108. 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 so that they may better protect pesticide applicators and the public from harm due to pesticide exposure. Changes would include having occupational users of pesticides demonstrate competency by meeting minimum competency requirements, and requiring additional competency determinations of those who use the most toxic pesticides in a manner that could result in significant exposure to the public. 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. In 1997 a group of stakeholders, the Certification and Training Assessment Group (CTAG) was established to evaluate the current situation and future direction of the program. CTAG, comprised of representatives of state pesticide regulatory agencies, cooperative extension services, and EPA Regions and Headquarters, and tribes, offered suggestions for change to the certification program to improve protections for public health and the environment.

**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 Cost and Benefits:**

EPA will develop an economic analysis to support this rule.

**Risks:**

The proposed regulation would require that 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	08/00/07	

**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****109. 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 help agricultural workers 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.

**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 Cost 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	08/00/07	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Undetermined

**Additional Information:**

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RIN: 2070-AJ22

**EPA****110. PESTICIDE AGRICULTURAL CONTAINER RECYCLING PROGRAM****Priority:**

Other Significant

**Legal Authority:**

7 USC 136 to 136y

**CFR Citation:**

40 CFR 165

**Legal Deadline:**

None

**Abstract:**

EPA will propose to require that manufacturers of agricultural and professional specialty pesticides support (either by managing and operating, or contracting with another organization) a container recycling program that meets the standards of the American National Standards Institute (ANSI). The proposed regulation will ensure the continued operation of an existing but endangered nationwide infrastructure for voluntary recycling of plastic pesticide containers.

**Statement of Need:**

State regulatory agencies and large pesticide manufacturers have requested that EPA issue a regulation. The current voluntary pesticide container recycling program is not self-sustainable and the program is in danger of collapsing in spite of a nationwide infrastructure that has developed to support the collection and recycling of pesticide containers. Over the past 12 years, the Agricultural Container Recycling Council (ACRC) has operated a voluntary recycling

program and has recycled over 80 million pounds of plastic pesticide containers with an annual budget of less than \$4 million. The voluntary program is at risk of collapse because not all registrants participate financially and some companies have resigned, or plan to resign. If the existing system fails, the infrastructure would be lost and would have to be replaced. In addition, without a recycling program, less desirable or improper disposal of at least 8 to 10 million additional pounds of plastic containers would be inevitable. The containers would be burned, added to landfills or buried, in many cases jeopardizing ground water.

**Summary of Legal Basis:**

FIFRA sections 19(e) and (f) mandate container design requirements and procedures and standards for the safe removal of pesticides from containers before disposal. This rule would facilitate safe recycling as a part of safe disposal or reuse. FIFRA sections 3, 6, 19(a) and 25 provide authority for EPA to promulgate a rule making participation in a recycling program a condition of registration.

**Alternatives:**

The following non-regulatory approaches have been considered: 1) Continue to pursue a voluntary program. This is not likely to be successful because it would rely heavily on a few registrants to cover program costs for all other registrants. The lack of support by non-participating registrants would not change. 2) Support the development of state laws. States want a national program to eliminate the inefficiencies that would be inherent in 50 separate infrastructures. 3) Encourage non-monetary incentives such as awards. This would not resolve the inequities inherent in the current voluntary system. 4) Encourage a phase-out of disposable containers. This would not be effective since most member companies are using refillable containers. The following regulatory approach was considered: Propose a detailed rule prescribing how recycling would be accomplished and by whom. This would significantly increase the cost of the rule and would reduce flexibility without much added benefit.

**Anticipated Cost and Benefits:**

The existing voluntary program has an annual budget of less than \$4 million. Current estimates are that ACRC member companies account for 80 to 85% of the pesticides sold annually in the agricultural pesticide market. We

would need to estimate the sales and container usage of registrants in the professional specialty pesticides market and identify the remaining sales in the agricultural market. The proposed rule is in line with EPA's mission to protect human health and safeguard the environment. By providing an opportunity for end users nationwide to recycle plastic pesticide containers, we will reduce the use of less desirable disposal methods, leading to less litter, reduced soil and ground water contamination from burial and/or land filling, and less air pollution from the open burning of containers. Also, containers would have to be properly rinsed before being recycled, leading to less possibilities for illness and injury from pesticides and their residues.

**Risks:**

This proposal would reduce risks to human health and the environment by lessening the amount of litter, reducing soil and ground water contamination caused by burial and/or land filling, and less air pollution from the open burning of containers. Also, proper rinsing prior to recycling would reduce risks of illness and injury from pesticides and their residues.

**Timetable:**

Action	Date	FR Cite
NPRM	08/00/07	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5050

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**RIN:** 2070-AJ29

**EPA**

**111. REVISIONS TO THE SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) RULE, 40 CFR PART 112**

**Priority:**

Other Significant

**Unfunded Mandates:**

Undetermined

**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 include a variety of issues associated with the July 2002 SPCC final rule. Specific decisions on the scope of the rulemaking will be determined after the final rule associated with the Notices of Data Availability has been completed and in relation to EPA guidance.

**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:**

The legal basis is 33 USC 1321 et seq.

**Alternatives:**

Undetermined.

**Anticipated Cost and Benefits:**

Undetermined.

**Risks:**

Undetermined.

**Timetable:**

Action	Date	FR Cite
Notice Clarifying Certain Issues	05/25/04	69 FR 29728
NPRM 1 Year 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	02/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Local, Tribal

**Additional Information:**

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

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**RIN:** 2050-AG16

**EPA**

**112. 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.

**Statement of Need:**

EPA is considering expanding the comparable fuels program. This program allows specific industrial wastes to be excluded from the Resource Conservation and Recovery Act (RCRA) when they are used for energy production and do not contain hazardous constituent levels exceeding those in a typical benchmark fuel that facilities would otherwise use. If EPA is successful in finding other industrial wastes that could be used for energy, this would not only save energy by reducing the amount of hazardous waste that would be otherwise treated and disposed, but also promote energy production from a domestic, renewable source and reduce our use of fossil fuels. EPA is also examining the effectiveness of the current comparable fuel program to determine whether changes could be made to the existing program to make it more effective.

**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 intends to first

propose and seek comment on potential regulatory modifications.

**Anticipated Cost and Benefits:**

When the existing comparable fuel exemption was established, EPA estimated that the rule would result in annual savings of 11 to 36 million dollars for generators and would result in annual costs of 3 to 13 million dollars for hazardous waste combustors. The savings to generators were made up of avoided hazardous waste combustion costs and revenues from sale of comparable fuels, less the analytical costs. Costs to hazardous waste combustion facilities stem from lost revenue from wastes are diverted to the comparable fuels market. EPA has not conducted a preliminary estimate of costs and benefits from modifications to the existing comparable fuels rule, as options to be proposed have not been selected. Prior to proposing options, EPA intends to reach out to a broad group of stakeholders to receive input on potential regulatory approaches that could be proposed. When EPA selects the approaches to be proposed, we will be in a position to estimate costs and benefits of any regulatory actions.

**Risks:**

The rationale for the Agency's approach to establishing the existing comparable fuels standards is that if a hazardous waste-derived fuel is comparable to a fossil fuel in terms of hazardous and other key constituents and has a heating value indicative of a fuel, EPA has discretion to classify such material as a fuel product, not as a waste. Given that a comparable fuel would have legitimate energy value and the same hazardous constituents in comparable concentrations to those in fossil fuel (and satisfies other parameters related to comparability as well), classifying such material as a fuel product and not as a waste promotes RCRA's resource recovery goals without creating any risk greater than those posed by the commonly used commercial fuels. If EPA maintains this "benchmark" approach in its revisions, the risks associated with any changes will remain unchanged. Until EPA establishes what approaches to propose for modifications to the comparable fuel standards, it is not possible to provide a description of the risks associated with such a proposal.

**Timetable:**

Action	Date	FR Cite
NPRM	06/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 4977

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**RIN:** 2050-AG24

**EPA**

**113. • DEFINITION OF SOLID WASTES REVISIONS**

**Priority:**

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

**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 will be issuing a supplemental proposal that would exclude from being a solid waste certain hazardous secondary materials that are reclaimed. We are also taking comment on revisions being considered to the legitimacy criteria, as well as taking comment 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 Cost and Benefits:**

We expect that this rule will increase the recycling of wastes covered by the rule. We have prepared an economic analysis for the proposed rule, and we are presently developing preliminary costs and benefits for all our regulatory options. When an option is chosen and a final rule is drafted, we will prepare a detailed economic analysis quantifying the costs and benefits.

**Risks:**

We are developing conditions for the rule so that there will be no negative impacts on human health and the environment.

**Timetable:**

Action	Date	FR Cite
NPRM	10/28/03	68 FR 61558
Supplemental NPRM	12/00/06	

**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.

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**RIN:** 2050-AG31

**EPA**

**FINAL RULE STAGE**

**114. NESHAP: HAZARDOUS ORGANIC NESHAP (HON) RESIDUAL RISK STANDARDS**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 7412

**CFR Citation:**

40 CFR 63

**Legal Deadline:**

Final, Statutory, April 22, 2003.

Final, Judicial, December 15, 2006, Court ordered deadline for final rule.

**Abstract:**

EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety. This rule will cover the major sources of air emissions within the synthetic organic chemical industry.

**Statement of Need:**

Section 112(f) of the Clean Air Act requires EPA to assess residual risks that remain after implementation of technology-based standards for each category of major sources of air-toxic emissions. Section 112(f) also mandates EPA to develop additional emission standards for these sources, as necessary, to provide an ample margin of safety. This rule will cover the major sources of air emissions within the synthetic organic chemical industry.

**Summary of Legal Basis:**

Clean Air Act Section 112

**Alternatives:**

Option 1 is no revision to NESHAP. Option 2 requires additional controls on equipment leaks and controls on some storage tanks and process vents that are controlled under the current rule.

**Anticipated Cost and Benefits:**

Under Option 2 exposures for 450,000 people would be reduced from above 1 in a million to below 1 in a million at an annualized cost of \$13 million.

**Risks:**

Baseline cancer incidence is 0.1 cases per year and risk to most exposed individual is 100 in a million.

**Timetable:**

Action	Date	FR Cite
NPRM	06/14/06	71 FR 34421
Final Action	01/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 4659; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2006/June/Day-14/a5219.htm>

**Sectors Affected:**

325 Chemical Manufacturing

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**RIN:** 2060-AK14

**EPA****115. NESHAP: HALOGENATED SOLVENT CLEANING—RESIDUAL RISK STANDARDS****Priority:**

Other Significant

**Legal Authority:**

42 USC 7412

**CFR Citation:**

40 CFR 63

**Legal Deadline:**

Final, Statutory, December 2, 2002.

Final, Judicial, December 15, 2006,  
Consent Decree.

**Abstract:**

The Halogenated Solvent Cleaning NESHAP limits emissions of HAP from solvent cleaning machines that use any of the following halogenated solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1, -trichloroethane, carbon tetrachloride, chloroform, or any combination of these solvents in a total concentration greater than 5 percent by weight. Each individual solvent cleaning machine is an affected source. The Halogenated Solvent Cleaning NESHAP was projected to reduce nationwide emissions of hazardous air pollutants (HAP) from halogenated solvent cleaning machines by 85,300 tons per year, or 63 percent of the 1991 baseline emissions of 140,525 tons/year. On December 3, 1999, the rule was amended by adding compliance options for continuous web cleaning machines. Continuous web cleaning machines are

considered a subset of in-line cleaning machines and are defined as: "a solvent cleaning machine in which parts such as film, coils, wire, and metal strips are cleaned at speeds typically in excess of 11 feet per minute. Parts are generally uncoiled, cleaned such that the same part is simultaneously entering and exiting the solvent application area of the solvent cleaning machine, and then recoiled or cut." This action is required by the CAA to assess residual risk and develop standards as necessary to provide an ample margin of safety.

**Statement of Need:**

Section 112(f) of the Clean Air Act requires EPA to assess residual risks that remain after implementation of technology-based standards for each category of major sources of air-toxic emissions. Section 112(f) also mandates EPA to develop additional emission standards for these sources, as necessary, to provide an ample margin of safety. This rule will cover the major sources of air emissions within the halogenated solvent cleaning industry.

**Summary of Legal Basis:**

Section 112(f) of the Clean Air Act.

**Alternatives:**

Based on its findings, EPA is co-proposed and sought comment on two options to amend to the existing standards. Both options would impose an annual cap on emissions of the solvents methylene chloride, perchloroethylene and trichloroethylene and provide cost savings to the industry. The proposed emission caps provide affected facilities with the flexibility to reduce their emissions using any traditional methods available to reduce emissions from their degreasing operations.

**Anticipated Cost and Benefits:**

Costs and benefits were summarized in the NPRM. The differences between the two options is that the annual costs for Option 1 are completely offset by the solvent savings of up to \$1 million when compared to the annual costs of Option 2. Option 2 establishes a more stringent emission cap, reduces more individual risks compared to Option 1 and moves more people into the range that EPA considers acceptable with a margin of safety. Option 2 will require an increased number of facilities with risks already less than 1-in-a-million to comply with the standard. No significant small business impacts are expected under either Options 1 or 2.



**Risks:**

Risk information was summarized in the NPRM. EPA completed a risk assessment to evaluate the risks remaining now that hazardous air emissions have been controlled at these facilities through MACT. Residual risks were found to exist from a number of facilities. Also in preparation for the proposed action, EPA completed a technology review to determine if it was necessary to revise the existing standards to account for developments in work practices, processes, and control technologies.

**Timetable:**

Action	Date	FR Cite
NPRM	08/17/06	71 FR 47669
NPRM Comment Period End	10/02/06	
Final Action	01/00/07	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Federalism:**

Undetermined

**Additional Information:**

SAN No. 4668; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2006/August/Day-17/a6927.htm>

**Sectors Affected:**

335999 All Other Miscellaneous Electrical Equipment and Component Manufacturing; 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 337124 Metal Household Furniture Manufacturing; 332116 Metal Stamping; 339 Miscellaneous Manufacturing; 336 Transportation Equipment Manufacturing

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**RIN:** 2060-AK22

**EPA**

**116. CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES**

**Priority:**

Economically Significant. Major under 5 USC 801.

**Unfunded Mandates:**

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

**Legal Authority:**

42 USC 7521

**CFR Citation:**

40 CFR Part 80; 40 CFR Part 86

**Legal Deadline:**

NPRM, Judicial, February 28, 2006, Consent Decree.

Final, Judicial, February 9, 2007, Consent Decree.

**Abstract:**

Motor vehicles are significant contributors to national emissions of several hazardous air pollutants. These pollutants are known or suspected to have serious health or environmental impacts. Reducing emissions of these pollutants will reduce risk to public health and welfare. The Clean Air Act requires EPA to periodically revise requirements to control emissions of these pollutants from mobile sources. EPA committed to this rulemaking in the preamble of the last rulemaking on this topic, promulgated on March 29, 2001. This rule will address the need for additional requirements, beyond those associated with existing programs and other forthcoming rules, to control hazardous air pollutants ("air toxics") from motor vehicles, nonroad engines and vehicles, and their fuels. Previous

mobile source programs for highway and nonroad sources and fuels have already reduced air toxics significantly and will provide substantial further reductions in coming years as new standards and programs are phased in. This mobile-source air toxics rule will provide an overview of these mobile source programs and associated toxics emissions reductions. The rule will then address potential changes to gasoline fuel parameters to reduce toxics such as benzene and the potential for additional vehicle controls. We are also considering portable fuel container controls due to their significant contribution to VOC emissions overall and the potential for exposure to evaporative benzene emissions.

**Statement of Need:**

Motor vehicles are significant contributors to national emissions of several hazardous air pollutants. These pollutants are known or suspected to have serious health or environmental impacts. Reducing emissions of these pollutants will reduce risk to public health and welfare. The Clean Air Act requires EPA to periodically revise requirements to control emissions of these pollutants from mobile sources. EPA committed to this rulemaking in the preamble of the last rulemaking on this topic, promulgated on March 29, 2001.

**Summary of Legal Basis:**

Clean Air Act Section 202

**Alternatives:**

The current proposal considers potential changes to gasoline fuel parameters to reduce toxics such as benzene and the potential for additional vehicle controls. We are also considering portable fuel container controls due to their significant contribution to VOC emissions overall and the potential for exposure to evaporative benzene emissions.

**Anticipated Cost and Benefits:**

These controls would significantly reduce emissions of benzene and other mobile source air toxics such as 1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and naphthalene. This proposal would result in additional substantial benefits to public health and welfare by significantly reducing emissions of particulate matter from passenger vehicles. We project annual nationwide benzene reductions of 35,000 tons in 2015, increasing to 65,000 tons by 2030. Total reductions in mobile source air toxics would be

147,000 tons in 2015 and over 350,000 tons in 2030. Passenger vehicles in 2030 would emit 45% less benzene. Gas cans meeting the new standards would emit almost 80% less benzene. Gasoline would have 37% less benzene overall. We estimate that these reductions would have an average cost of less than 1 cent per gallon of gasoline and less than \$1 per vehicle. The average cost for gas cans would be less than \$2 per can. The reduced evaporation from gas cans would result in significant fuel savings, which would more than offset the increased cost for the gas can.

**Risks:**

Benzene is a known human carcinogen, and mobile sources are responsible for the majority of benzene emissions. The other mobile source air toxics are known or suspected to cause cancer or other serious health effects.

**Timetable:**

Action	Date	FR Cite
NPRM	03/29/06	71 FR 15804
Final Action	02/00/07	

**Regulatory Flexibility Analysis Required:**

Yes

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 4748; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2006/March/Day-29/a2315a.htm>

**Sectors Affected:**

3361 Motor Vehicle Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 32411 Petroleum Refineries; 4227 Petroleum and Petroleum Products Wholesalers

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**RIN:** 2060-AK70

**EPA****117. CLEAN AIR FINE PARTICLE IMPLEMENTATION RULE****Priority:**

Other Significant

**Legal Authority:**

42 USC 7410; 42 USC 7501 et seq

**CFR Citation:**

40 CFR 51

**Legal Deadline:**

None

**Abstract:**

In 1997, EPA promulgated National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM-2.5). 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, includes 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. These SIP development activities include technical analyses to identify effective strategies for reducing emissions contributing to PM-2.5 levels, and the adoption of regulations as needed in order to attain the standards. Estimates show that compliance with the standards will prevent thousands of premature deaths from heart and lung disease, tens of thousands of hospital admissions and emergency room visits, and millions of absences from school and work every year.

**Statement of Need:**

This rule is needed in order to provide guidance to State and local agencies in preparing State implementation plans (SIPs) designed to bring areas into attainment with the 1997 PM-2.5 standards. The implementation requirements for nonattainment areas are generally described in subpart 1 of section 172 of the Clean Air Act. This rule provides further interpretation of those requirements for the PM-2.5 standards.

**Summary of Legal Basis:**

42 USC 7410 and 42 USC 7501 et seq.

**Alternatives:**

Alternatives will be explored as the proposal is developed.

**Anticipated Cost and Benefits:**

This information will be provided as the proposal is developed.

**Risks:**

The risks addressed by this rule are those addressed by the 1997 NAAQS rule — i.e., the health and environmental risks associated with nonattainment of the NAAQS. These risks were summarized in detail in the analyses accompanying the 1997 NAAQS rule.

**Timetable:**

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

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State, Local, Tribal

**Additional Information:**

SAN No. 4752; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2005/November/Day-01/a20455.htm>

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**RIN:** 2060-AK74

**EPA****118. 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 Cost and Benefits:**

Cost and benefit information will be developed as appropriate as the rulemaking proceeds.

**Risks:**

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

**Timetable:**

Action	Date	FR Cite
NPRM	09/14/06	71 FR 54235
Final Action	05/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, Local, State

**Additional Information:**

SAN No. 4793

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**RIN:** 2060-AL75

**EPA**

**119. FUEL ECONOMY LABELING OF MOTOR VEHICLES: REVISIONS TO IMPROVE CALCULATION OF FUEL ECONOMY ESTIMATES**

**Priority:**

Other Significant

**Legal Authority:**

15 USC 2001 to 2003; 15 USC 2005 to 2006; 15 USC 2013

**CFR Citation:**

40 CFR 600

**Legal Deadline:**

None

**Abstract:**

The Energy Policy and Conservation Act of 1974 requires EPA to establish regulations that require auto manufacturers to display fuel economy estimates on a label for each new vehicle. EPA also has authority to prescribe the test procedures used to calculate these fuel economy estimates. These estimates allow consumers to compare the fuel economy of different vehicles. Current window stickers have two fuel economy estimates, "City" and "Highway." While actual driving conditions will cause variations from the EPA estimates, consumers should expect to achieve fuel economy that is reasonably close to those estimates. Since EPA last revised the methods for measuring fuel economy (1985), many conditions have changed - speed limits are higher, congestion has increased, and more vehicles are equipped with power-hungry accessories, like air conditioning. All of these factors will impact a vehicle's actual fuel economy. Some of these factors - aggressive and high-speed driving and air conditioner use in particular - have been addressed in EPA emission test procedures. In the past few years, there has been a growing awareness by consumers indicating that they are experiencing lower actual fuel economy than the EPA estimates. EPA has examined many factors that are not currently accounted for in our fuel economy estimates. EPA's initial analyses indicate that the fuel economy label estimates are overestimated, perhaps significantly for some vehicles. This action will provide consumers with more accurate and credible information regarding the comparative fuel economy of vehicles. This action will amend the way in which fuel economy estimates are calculated, primarily by incorporating the fuel economy results from additional vehicle tests performed today for emissions compliance purposes. It will also propose changes to how the fuel economy estimates and other related information are presented to consumers on the vehicle window sticker label. The changes in this action will not impact the Corporate Average Fuel Economy requirements.

**Statement of Need:**

Section 774 of the Energy Policy Act of 2005 requires EPA to update the fuel economy label calculation methodology to reflect a variety of factors not currently accounted for in the existing test procedures. Possible factors EPA will consider include how well the methodology reflects real-world driving conditions and advances in automotive technology.

**Summary of Legal Basis:**

Section 774 of the Energy Policy Act of 2005.

**Alternatives:**

EPA is considering several options, including adding new fuel economy tests and revising adjustment factors.

**Anticipated Cost and Benefits:**

Costs and benefits were summarized in the NPRM.

**Risks:**

Risk information was summarized in the NPRM.

**Timetable:**

Action	Date	FR Cite
NPRM	02/01/06	71 FR 5425
Final Action	12/00/06	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal

**Additional Information:**

SAN No. 4962; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-AIR/2006/February/Day-01/a451.htm>; EPA Docket information: EPA-HQ-OAR-2005-0169

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**RIN:** 2060-AN14

**EPA****120. 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 Cost and Benefits:**

Cost and benefit information will be developed as the rulemaking proceeds.

**Risks:**

Risk information will be developed as the rulemaking proceeds.

**Timetable:**

Action	Date	FR Cite
NPRM	08/22/05	70 FR 49014
Final Action	12/00/06	

**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**

**121. RENEWABLE FUELS STANDARD RULE**

**Priority:**

Other Significant

**Legal Authority:**

Pub. L. 109-58

**CFR Citation:**

40 CFR 80.1101

**Legal Deadline:**

Final, Statutory, August 6, 2006, The Energy Policy Act of 2005 requires that EPA promulgate RFS regulations by 08/06/2006.

**Abstract:**

The Energy Policy Act of 2005 (the "Act"), signed into law on August 8, 2005, requires EPA to promulgate regulations implementing the Renewable Fuels Standard (RFS) within one year of enactment. The RFS requires specific volumes of renewable fuel to be in gasoline sold in the U.S. starting with 4.0 billion gal/yr in 2006 up to 7.5 billion gal/yr in 2012. The Act provides that if EPA fails to promulgate regulations within one year, then a default value of 2.78% renewable fuel in gasoline will be in effect for 2006. We recently promulgated a rule ("Renewable Fuel Standards Requirements for 2006," 70 FR 77325, 12/30/05) to implement the default standard. The Agency must complete its obligation under the Act by promulgating a rule that implements the RFS for years 2007 and beyond. Such rule must establish how the renewable fuel standard is defined and calculated, what parties are liable, and how compliance with the standard is

to be determined. In addition, the rule must establish a system by which renewable fuel credits can be generated, and traded/sold between parties. This statutory provision is subject to multiple interpretations of key terms. The "Renewable Fuel Standard Requirements for 2006" that we promulgated on 12/30/05 interprets the default provision so that it can be implemented with certainty in the event EPA fails to promulgate the RFS within one year of enactment. It provides for refiners, importers and blenders to meet the 2.78% requirement collectively, rather than on an individual basis. Since our projections show that this value is highly likely to be met in 2006 under planned practices of the refining industry, we do not anticipate any impacts on the industry in general, nor any on small businesses. It will have no effect on State, local or tribal governments.

**Statement of Need:**

In The Energy Policy Act of 2005 (PL 109-58), Congress directed EPA to undertake this rulemaking to support the goal of increasing the production and use of renewable fuels.

**Summary of Legal Basis:**

The Energy Policy Act of 2005 (PL 109-58) requires EPA to promulgate regulations that implement the renewable fuels standard (RFS), which applies to refineries, importers and blenders as appropriate. The Act specifies required amounts of renewable fuel that must be in gasoline sold in the United States. EPA's regulations must define how the standard is to be computed, who is liable, and it must also include a credit trading system which is stipulated in the Act.

**Alternatives:**

The Energy Policy Act of 2005 set forth requirements for the use of Renewable Fuels. EPA set forth specific requirements for the minimum volume of renewable fuels, a schedule to increase use, and requirements for establishing a credit and trading program. This rule intends to comply directly with EPA's requirements.

**Anticipated Cost and Benefits:**

On average, EPA estimates the cost of this increase in renewable fuels to range from 0.3 to 1 cent per gallon of gasoline. As part of the final rulemaking, EPA plans to include an updated analysis. However, currently, renewable fuel demand is projected to

exceed the levels required by the Energy Policy Act. The RFS does, however, establish a baseline that provides market certainty that at least a minimum amount of renewable fuel will be used should market conditions change. Depending on the volume of renewable fuel anticipated to be used in 2012, EPA estimates that this transition to renewable fuels will reduce petroleum consumption by 2.3 to 3.9 billion gallons or roughly 1.0 to 1.6 percent of the petroleum that would otherwise be used by the transportation sector. The preliminary analysis of the emissions and air quality impacts of the expanded use of renewable fuels indicates that carbon monoxide emissions from gasoline-powered vehicles and equipment will be reduced by 1.3 to 3.6 percent, benzene (a mobile source air toxic) emissions will be reduced by 1.7 to 6.2 percent and carbon dioxide equivalent greenhouse gas emissions will be reduced by 9 to 14 million tons or about 0.4 to 0.6 percent of the anticipated greenhouse gas emissions from the transportation sector in the United States in 2012. At the same time, other vehicle emissions may increase as a result of greater renewable fuel use. Nationwide, EPA estimates between a 28,000 and 97,000 ton increase in volatile organic compounds plus nitrogen oxides (VOC + NOx) emissions. However, the effects will vary significantly by region. EPA estimates that areas such as New York City, Chicago, and Los Angeles will experience no increase, while other areas may see an increase VOC emissions from 3 to 5 percent and an increase in NOx emissions from 4 to 6 percent from gasoline powered vehicles and equipment.

**Risks:**

Failure to comply with EPA's statutory mandate would void intention of providing stability and certainty for renewable market growth and support for expanding domestic energy production and reduced reliance on foreign sources of petroleum.

**Timetable:**

Action	Date	FR Cite
NPRM	09/22/06	71 FR 55552
NPRM Comment Period End	11/12/06	
Final Action	03/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

None

**Additional Information:**

SAN No. 5048

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**RIN:** 2060-AN76

**EPA**

**122. • 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:**

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, includes 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 interpollutant trading of offsets and finally the transition provisions.

**Statement of Need:**

This rule is needed in order to provide guidance to State and local agencies in preparing State implementation plans (SIPs) designed to bring areas into attainment with the 1997 PM-2.5 standards. The implementation requirements for nonattainment areas are generally described in subpart 1 of section 172 of the Clean Air Act. This rule provides further interpretation of those requirements for the PM-2.5 standards.

**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 Cost and Benefits:**

This information will be provided as the final rule is developed.

**Risks:**

The risks addressed by this rule are those addressed by the 1997 NAAQS rule — i.e., the health and environmental risks associated with nonattainment of the NAAQS. These risks were summarized in detail in the analyses accompanying the 1997 NAAQS rule.

**Timetable:**

Action	Date	FR Cite
Final Action	02/00/07	

**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**

**123. PESTICIDES; DATA REQUIREMENTS FOR CONVENTIONAL CHEMICALS**

**Priority:**

Other Significant

**Legal Authority:**

7 USC 136 to 136g

**CFR Citation:**

40 CFR 158

**Legal Deadline:**

None

**Abstract:**

EPA is revising its data requirements for the registration of conventional pesticide products. In this action, the Agency is revising data requirements that pertain to product chemistry, toxicology, residue chemistry, applicator exposure, post-application exposure, nontarget terrestrial and aquatic organisms, nontarget plant protection, and environmental fate. When promulgated, the data requirements will reflect current scientific knowledge and understanding. These revisions will improve the Agency's ability to make regulatory decisions about the human health and environmental effects of pesticide products to better protect wildlife, the environment, and people, including sensitive subpopulations. Coupled with revision of data requirements, EPA is reformatting the requirements and revising its general procedures and policies associated with data submission. By codifying existing data requirements which are currently applied on a case-by-case basis, the pesticide industry, along with other

partners in the regulated community, would attain a better understanding and could better prepare for the pesticide registration process.

**Statement of Need:**

Since the 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, updated data requirements have been applied on a case-by-case basis. The codified data requirements have not been revised to keep pace with the updated data requirements. The proposed changes update and revise the data requirements, reformat the structure of part 158 and update procedures and policies for data submission. The changes are intended to provide stakeholders with a more transparent and improved clarity of the potential data requirements, more focused use patterns that reflect current practice, and a more efficient registration process.

**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. It is incumbent on the Agency to reevaluate those data requirements in light of scientific advances, analytical improvements, and new technology, in order to provide a sound scientific basis for those decisions. The Agency also 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.

**Anticipated Cost and Benefits:**

Using the currently codified requirements as the baseline for the impact analysis, the total annual impact of the proposed revisions to the pesticide industry is estimated to be

about \$51 million. Of this estimated total annual impact, about \$28.9 million per year represents new data requirements that have been imposed over the years but are not codified in the CFR. In addition, about \$21.6 million represents the cost of the proposed modified or expanded existing data requirements for certain tests and use patterns, and about \$1.9 million represents the cost of proposed new data requirements for data that have not yet been routinely required. The qualified benefits include improved usability and transparency for registrants, improved scientific basis for pesticide regulatory decisions, enhanced international harmonization with less duplication of data.

**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	03/11/05	70 FR 12277
Notice of Public Meeting	04/01/05	70 FR 16785
NPRM: Extension of Comment Period	06/08/05	70 FR 33414
Final Action	04/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 2687; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-PEST/2005/March/Day-11/p4466.htm>;

Individual Document id in the EPA docket: <http://www.regulations.gov>

**Sectors Affected:**

32532 Pesticide and Other Agricultural Chemical Manufacturing

**URL For More Information:**

[www.epa.gov/pesticides/regulating/data.htm](http://www.epa.gov/pesticides/regulating/data.htm)

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**RIN:** 2070-AC12

**EPA**

**124. LEAD-BASED PAINT ACTIVITIES; 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 and 2684 (TSCA sections 402 and 404)

**CFR Citation:**

40 CFR 745

**Legal Deadline:**

Final, Statutory, October 28, 1996.

**Abstract:**

The Environmental Protection Agency is developing a comprehensive program for the management of renovation, repair and painting activities involving lead based paint hazards. The program will be comprised of a combination of approaches including an extensive education and outreach campaign for lead-safe work practices and training for industry, an outreach campaign

designed to expand consumer awareness and create demand for the use of lead-safe work practices and the proposal of regulatory requirements. On January 10, 2006, the EPA proposed regulatory requirements for renovation, repair and painting contractors involved in activities where, as a result of their work, lead hazards are created. [Modifications to the abatement requirements will also be considered to ensure compatibility between the existing requirements and any future renovation requirements.]

#### 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 lead-based paint 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 include renovation or remodeling activities that create lead-based paint hazards. In order to determine which contractors are engaged in such activities the Agency is directed to utilize the results of the study and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in health effects, and others.

#### Alternatives:

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 Cost and Benefits:

EPA's quantitative cost estimates fall into four categories: Training Costs, Work Practice Costs, Clearance Testing Costs, and Administrative Costs. The estimates vary depending upon the option selected. In most cases we expect that requirements related to Clearance Testing and Work Practices will contribute the most to overall rule cost. The benefits analysis will not provide direct quantitative measures of each (or any) option. EPA does not have a complete risk assessment (with dose-response functions) that would permit direct quantitative estimates. We do have other data, such as estimated loadings of Pb generated by renovation work, number and type of renovation events, demographics of the exposed population, and the costs of various health effects previously linked to Pb exposure. With the available information we are able utilize several qualitative approaches to frame the benefits associated with an effective renovation rule.

#### Risks:

These rules are 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 and may be associated with elevated blood lead levels. 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
Final Action	06/00/08	

#### 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:

[www.epa.gov/oppt/lead/pubs/renovation.htm](http://www.epa.gov/oppt/lead/pubs/renovation.htm)

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RIN: 2070-AC83

#### EPA

#### 125. PESTICIDES; DATA REQUIREMENTS FOR BIOCHEMICAL AND MICROBIAL PRODUCTS

#### Priority:

Other Significant



**Legal Authority:**

7 USC 136 to 136y

**CFR Citation:**

40 CFR 158

**Legal Deadline:**

None

**Abstract:**

EPA will update the data requirements necessary to register a biochemical or microbial pesticide product. The revisions will codify data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for biochemical and microbial pesticides, including product chemistry and residue chemistry, toxicology, and environmental fate and effects. The revision will not include plant incorporated protectants.

**Statement of Need:**

The Agency is in the process of updating its data requirements for pesticides. Current data requirements for biochemical and microbial pesticides were originally promulgated in 1984. Since the data requirements were first published in 1984, the information needed to support the registration of a biochemical or microbial pesticide has evolved along with the expanding knowledge base of pesticide chemical technology. Over the years, updated data requirements have been applied on a case-by-case basis. The codified data requirements have not been revised to keep pace with the updated data requirements. EPA has proposed to update and revise the data requirements. These revisions build upon those previously proposed for conventional chemicals, tailored to the lesser data needs for biochemical and microbial pesticides. The changes are intended to provide stakeholders with a more transparent and improved clarity of the potential data requirements, more focused use patterns that reflect current practice, and a more efficient registration process.

**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. It is incumbent on the Agency to reevaluate those data requirements in light of scientific advances, analytical improvements, and new technology, in order to provide a

sound scientific basis for those decisions. On a case by case basis, the Agency also 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.

**Anticipated Cost and Benefits:**

EPA has analyzed several economic alternatives for the proposed revisions to the biochemical and microbial pesticide data requirements, based upon consultations with stakeholders in industry, academia and individual registrants. EPA has considered both a low-cost and a high-cost alternative to the proposal. The rule is expected to reduce burdens and costs to registrants of biochemical and microbial pesticides. Current estimated savings are in the range of \$3 million annually, or \$63,000 per company. The qualified benefits include improved usability and transparency for registrants, improved scientific basis for pesticide regulatory decisions, and enhanced international harmonization with less duplication of data.

**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	03/08/06	71 FR 12071
Final Action	06/00/07	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 4596; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-PEST/2006/March/Day-08/p2185.htm>

**Sectors Affected:**

32532 Pesticide and Other Agricultural Chemical Manufacturing

**URL For More Information:**

[www.epa.gov/pesticides/regulating/data.htm](http://www.epa.gov/pesticides/regulating/data.htm)

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**RIN:** 2070-AD51

**EPA**

**126. NOTIFICATION OF CHEMICAL EXPORTS UNDER TSCA SECTION 12(B)**

**Priority:**

Other Significant

**Legal Authority:**

15 USC 2611

**CFR Citation:**

40 CFR 707

**Legal Deadline:**

None

**Abstract:**

Section 12(b) of the Toxic Substances Control Act (TSCA) states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which submission of data is required under section 4 or 5(b), or for which a rule, action or order has been proposed or promulgated under section 5, 6, or 7,

shall notify the EPA Administrator of such export or intent to export. The Administrator in turn will notify the government of the importing country of EPA's regulatory action with respect to the substance. As part of OMB's Regulatory Reform of the U.S. Manufacturing Sector Report (2005), industry commented that the existing TSCA section 12(b) regulations do not provide a low-level cut-off for the export notification requirements. To address that concern, EPA committed to OMB that it would consider potential changes to the TSCA section 12(b) regulation within the scope of existing statutory authority and issue a proposed amendment to address the concern expressed by January 2006. EPA issued proposed amendments to the 12(b) export notification regulations on February 9, 2006 that included a de minimis concentration level below which notification would not be required along with several other changes. The public comment period on the proposed rule has ended and EPA is proceeding with development of a rule to finalize the proposed changes. Legislation is currently pending to address the implementation in the US of the Rotterdam Convention on Prior Informed Consent (PIC), which itself includes export notification requirements.

#### Statement of Need:

Industry nominated the implementing regulations for reform consideration twice. First in the annual report on the costs and benefits of regulations, entitled "Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities," that is prepared by the Office of Management and Budget (OMB) and submitted to Congress each year. (See OMB's compilation of comments, summary no. 190, pg 10, commenter no. 12 available at [http://www.whitehouse.gov/omb/inforeg/key\\_comments.html](http://www.whitehouse.gov/omb/inforeg/key_comments.html).) And then again in 2004, see no. 39 in OMB's Regulatory Reform of the U.S. Manufacturing Sector Report (2005). The industry nominations stated that: many notifications are for minor substance/product ingredients or impurities that are not an imminent concern; compliance with export notification requirements is a significant cost to industry and a paper work burden to EPA; and that the scope and number of notifications has created confusion among importing countries. After careful consideration of these nominations, EPA published proposed

amendments to the 12(b) export notification regulations that, if finalized, will reduce the reporting burden on industry and EPA and also focus importing governments' attention on those chemicals for which EPA has proposed to make or has made a definitive finding that a chemical "presents or will present" an unreasonable risk to human health or the environment.

#### Summary of Legal Basis:

Section 12(b)(2) of the Toxic Substances Control Act (TSCA).

#### Alternatives:

In the proposed rule, EPA requested public comments on alternative approaches that could be considered, including whether there are more appropriate de minimis thresholds that should be used.

#### Anticipated Cost and Benefits:

The Economic Analysis for the proposed rule estimated that the proposed amendments would save the regulated community \$440,000 in costs over 20 years and would save the Federal government \$450,000 over 20 years.

#### Risks:

None.

#### Timetable:

Action	Date	FR Cite
NPRM	02/09/06	71 FR 6733
Final Action	12/00/06	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

Federal

#### Additional Information:

SAN No. 4858; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-TOX/2006/February/Day-09/t1797.htm>; EPA Docket information: EPA-HQ-OPPT-2005-0058

#### URL For More Information:

[www.epa.gov/opptintr/chemtest/12b.htm](http://www.epa.gov/opptintr/chemtest/12b.htm)

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RIN: 2070-AJ01

#### EPA

#### 127. TESTING AGREEMENT FOR PERFLUOROCTANOIC ACID (PFOA)

#### Priority:

Other Significant

#### Legal Authority:

15 USC 2603 "TSCA 4"

#### CFR Citation:

40 CFR 790 to 799

#### Legal Deadline:

None

#### Abstract:

PFOA is a synthetic (man-made) chemical that does not occur naturally in the environment. EPA identified data gaps regarding the sources and exposure pathways of PFOA and is seeking additional data concerning the potential relationship between fluoropolymer and fluorotelomer based polymer chemicals and PFOA. EPA has invited interested parties to monitor and participate in negotiations for developing several industry sponsored testing programs concerning fluoropolymers and fluorotelomer based polymers which may metabolize or degrade to PFOA. These testing programs would be set in place preferably as publicly negotiated enforceable consent agreements (ECAs) under section 4 of the Toxic Substances Control Act (TSCA) among EPA, industry, and interested parties under section 4 of TSCA, but may also be established as negotiated memoranda of understanding (MOUs) where circumstances preclude moving forward under ECAs. The goal of the PFOA ECA

process is to better understand the sources and exposure pathways leading to the presence of PFOA in humans and the environment.

**Statement of Need:**

In the late 1990's, EPA received information indicating that perfluorooctyl sulfonates (PFOS) were widespread in the blood of the general population, and presented concerns for persistence, bioaccumulation, and toxicity. Following discussions between EPA and 3M, the manufacturer of PFOS, the company terminated production of these chemicals. Findings on PFOS led EPA to review similar chemicals, including PFOA, starting in 2000, to determine whether they might present concerns similar to those associated with PFOS. PFOA is very persistent in the environment and was being found at very low levels both in the environment and in the blood of the general U.S. population. Studies indicated that PFOA can cause developmental and other adverse effects in laboratory animals. PFOA also appears to remain in the human body for a long time. All of these factors, taken together, prompted the Agency to investigate whether PFOA might pose a risk to human health and the environment at the levels currently being found, or at levels that might be reached in the future as more PFOA continues to be released into the environment. EPA does not have a full understanding of how people are exposed to PFOA, which is used as an essential processing aid in the manufacture of fluoropolymers, and may also be a breakdown product of other related chemicals, called fluorinated telomers. In April 2003, EPA released a preliminary risk assessment for PFOA and started a public process to identify and generate additional information to better understand the sources of PFOA and the pathways of human exposure. EPA is negotiating with multiple parties to produce missing information on PFOA through Enforceable Consent Agreements (ECAs), memoranda of understanding, and voluntary commitments. The ECA activities related to PFOA are addressed by the Regulatory Agenda entry.

**Summary of Legal Basis:**

These Consent Orders which incorporate Enforceable Consent Agreements (ECAs) will be issued under section 4(a) 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) of TSCA authorizes EPA to require manufacturers and processors of chemical substances and mixtures to test these chemicals to determine whether they have adverse health or environmental effects. Section 4(a) empowers the Agency to promulgate rules which require such testing. In addition, EPA has authority to enter into ECAs requiring testing where they provide procedural safeguards equivalent to those that apply where testing is conducted by rule (see 40 CFR 790).

**Alternatives:**

EPA identified the need to improve its understanding of the sources and pathways of exposure to PFOA in 2003 and initiated a process to develop needed new data on the issue. This new information will assist the Agency in determining if there are potential risks and what risk management steps may be appropriate. Specifically, EPA is working with industry and other stakeholders to obtain additional monitoring information on PFOA, exposures resulting from incineration or loss from products as they are used over time, and telomer biodegradation as a potential source of PFOA. The Agency is developing formal TSCA Section 4 Enforceable Consent Agreements (ECAs) and Memoranda of Understanding (MOUs) with industry in a public process involving a large number of interested parties, and is cooperating on voluntary research activities. Data needs which remain unmet through the MOUs and voluntary commitments may be addressed through additional ECAs and/or rulemaking.

**Anticipated Cost and Benefits:**

The potential benefits of these ECAs are substantial, as no one — whether in industry, government, or the public — can make reasoned risk management decisions in the absence of reliable health/environmental effects and exposure information. These ECAs are expected to reduce scientific uncertainties and to enable EPA and the public to more fully understand the pathways of human exposure and potential risks from PFOA. The costs

of the testing that would be imposed is estimated to be on the order of several hundred thousand dollars for each.

**Risks:**

PFOA is very persistent in the environment and was being found at very low levels both in the environment and in the blood of the general U.S. population. Studies indicated that PFOA can cause developmental and other adverse effects in laboratory animals. PFOA also appears to remain in the human body for a long time. Data collected and/or developed under these Consent Orders/ECAs, when combined with information about hazard, 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
Final: ECA and CO for Fluoropolymer Chemicals Incineration	07/08/05	70 FR 39630
Final: ECA and CO for Fluorotelomer-based Polymer Chemicals Incineration	07/08/05	70 FR 39624
Notice: Measurement of PFOA Generated from Thermal Degradation of Fluoropolymer Chemicals	12/00/06	
Stewardship Program	12/00/06	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Businesses

**Government Levels Affected:**

Federal

**Additional Information:**

SAN No. 3493.1; EPA publication information: Final: ECA and CO for Fluorotelomer-based Polymer Chemicals Incineration - <http://www.epa.gov/fedrgstr/EPA-TOX/2005/July/Day-08/t13492.htm>; EPA Docket information: OPPT-2003-0012

**URL For More Information:**

[www.epa.gov/oppt/pfoa/index.htm](http://www.epa.gov/oppt/pfoa/index.htm)

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**RIN:** 2070-AJ06

**EPA**

**128. HAZARDOUS WASTE MANIFEST REVISIONS-STANDARDS AND PROCEDURES FOR ELECTRONIC MANIFESTS**

**Priority:**

Other Significant. Major under 5 USC 801.

**Legal Authority:**

42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6926; PL 105-277

**CFR Citation:**

40 CFR 260; 40 CFR 262; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 271

**Legal Deadline:**

None

**Abstract:**

This action is aimed at continuing the development of regulatory standards and procedures that will govern the initiation, signing, transmittal, and retention of hazardous waste manifests using electronic documents and systems. EPA proposed electronic manifest standards in May 2001, as part of a more general manifest revision action that also addressed standardizing the paper manifest form's data elements and procedures for its use across all states. The Manifest Form Revisions was decoupled from action on the electronic manifest, and the Final Form Revisions Rule was published on June 16, 2005. The May 2001 proposed rule included: (1) Electronic file formats for the manifest data elements; (2) electronic signature options; and (3) computer security controls aimed at ensuring data integrity and reliable

systems. Subsequently in May 2004, a stakeholder meeting collected additional stakeholder views on the future direction of the electronic manifest. Based on the record developed for the proposed standards and the additional views from stakeholders at the May 2004 meeting, EPA is considering final action on the proposed standards. However, since the publication of the proposed rule in 2001, EPA has found that there is a fairly broad consensus in favor of the development of a national e-manifest system by EPA. EPA is now considering the option of developing a national system, but EPA's ability to pursue this option will depend on new funding being authorized or on new authority for EPA to collect user fees.

**Statement of Need:**

The regulation is necessary to establish the standards and procedures under which hazardous waste handlers will be authorized to use electronic manifests in lieu of the existing paper manifest forms. The current regulations only allow the use of prescribed paper forms which must be carried physically with the waste shipment, signed by hand with each change of custody, and filed among each waste handler's operating records. This regulation will remove impediments in the current regulations to using electronic manifests, and it will specify the conditions under which electronic manifests may be obtained, completed, electronically signed, and transmitted, so that the electronic manifests may be used and accepted as the legal equivalent of the current paper forms.

**Summary of Legal Basis:**

There is currently not in place a statute or court order which requires EPA to adopt the electronic manifest regulation. However, members of Congress are currently considering a Bill that would mandate the development of an electronic manifest system by EPA, and such a Bill, if enacted during the 109th Congress, could include a regulatory deadline for promulgating a regulation authorizing the use of electronic manifests. Whether or not there is such a statutory mandate, EPA could develop a regulation addressing the e-Manifest under the authority of RCRA Section 3002(a)(5), which authorizes EPA to promulgate regulations establishing standards for generators of hazardous waste, including standards on "the use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated

is designated for treatment, storage, or disposal in and arrives at" permitted facilities.

**Alternatives:**

Based on comments submitted on the proposed rule, and additional stakeholder input received at public meetings, EPA's preferred alternative is now the development of a consistent, national e-Manifest system that would be developed and operated under a Federal contract funded by user fees, and hosted on EPA's Central Data Exchange reporting system. Other alternatives include a national system that would be developed entirely privately; a decentralized option like the one suggested in the proposed rule, under which various private entities would develop numerous e-Manifest systems adhering to standards announced by EPA; and a no action alternative, under which all manifesting would continue only with paper manifests.

**Anticipated Cost and Benefits:**

The estimated 1st year or start-up costs for a national e-Manifest system are projected to be in the range of \$3.98 million to \$5.32 million. Annual operation and maintenance (O&M) costs for such a system are projected in the range \$2.03 million to \$2.48 million. Economic benefits from such a system include net savings to manifest users and to State RCRA agencies of about \$100 million per year, assuming that 75 percent of manifests can be completed electronically. These projected savings can also be expressed as a net unit savings of \$23 to \$40 per manifest. Non-economic benefits expected from the e-Manifest include: Better quality and more timely waste shipment data; nearly real time shipment tracking capabilities for users; enhanced inspection and compliance monitoring capabilities for regulators; more rapid notification and response to problems or discrepancies with waste shipments; more efficient or "one-stop" submission of manifest data to EPA and States; and new possibilities to manage manifest data and to simplify or consolidate existing systems for reporting and tracking manifest and biennial report data.

**Risks:**

This action addresses administrative requirements for tracking hazardous waste shipments and does not involve the control of "risks" in the sense that RCRA regulations typically address the risks posed by the management of hazardous wastes. There is not a formal

risk assessment developed for this action. Since the e-manifest regulation could authorize the use of an information technology (IT) system that would be developed to create and transmit electronic manifests, there would be information system management risks and information security risks associated with developing and operating such an IT system. EPA will assess and manage these information technology and security risks as part of the Capital Planning and Investment Control (CPIC) process that governs the management of EPA's IT investments.

**Timetable:**

Action	Date	FR Cite
NPRM	05/22/01	66 FR 28240
Notice of Public Meeting	04/01/04	69 FR 17145
NODA Final Action	04/18/06 04/00/08	71 FR 19842

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 31471; EPA publication information: NPRM - [http://www.gpo.gov/su\\_docs/aces/fr-cont.html](http://www.gpo.gov/su_docs/aces/fr-cont.html); Split from RIN 2050-AE21; EPA Docket information: EPA-HQ-RCRA-2001-0032

**Sectors Affected:**

325 Chemical Manufacturing; 2211 Electric Power Generation, Transmission and Distribution; 332 Fabricated Metal Product Manufacturing; 2122 Metal Ore Mining; 2111 Oil and Gas Extraction; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 323 Printing and Related Support Activities; 3221 Pulp, Paper, and Paperboard Mills; 482 Rail Transportation; 484 Truck Transportation; 5621 Waste Collection; 56221 Waste Treatment and Disposal; 483 Water Transportation

**URL For More Information:**

[www.epa.gov/epaoswer/hazwaste/gener/manifest/](http://www.epa.gov/epaoswer/hazwaste/gener/manifest/)

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**RIN:** 2050-AG20

**EPA**

**129. OIL POLLUTION PREVENTION; SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) REQUIREMENTS—AMENDMENTS**

**Priority:**

Economically Significant

**Legal Authority:**

33 USC 1321

**CFR Citation:**

40 CFR 112

**Legal Deadline:**

None

**Abstract:**

On September 20, 2004, the Environmental Protection Agency (EPA or the Agency) issued two Notices of Data Availability (NODAs) concerning certain facilities and oil-filled and process equipment. Based on its review of the information received from the NODAs, EPA proposed to amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the regulatory burden for certain facilities by: providing an option that would allow owners/operators of facilities that store less than 10,000 gallons of oil and meet other qualifying criteria to self-certify their SPCC Plans, in lieu of review and certification by a Professional Engineer; providing an alternative to the secondary containment requirement, without requiring a determination of impracticability, for facilities that have certain types of oil-filled equipment; defining and providing an exemption for motive power containers; and exempting airport mobile refuelers from the specifically sized secondary

containment requirements for bulk storage containers. In addition, the Agency also proposed to remove and reserve certain SPCC requirements for animal fats and vegetable oils and proposed a separate extension of the compliance dates for farms (see 70 FR 73524, December 12, 2005). In proposing these changes, EPA is significantly reducing the burden imposed on the regulated community in complying with the SPCC requirements, while maintaining protection of human health and the environment. EPA has also requested comments on the potential scope of future rulemaking.

**Statement of Need:**

The Office of Management and Budget (OMB) targeted certain rulemakings across the U.S. Environmental Protection Agency (EPA), including the SPCC rule, for regulatory reform on an expedited schedule. (Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities ("Thompson Report")). This rulemaking will provide streamlined, alternative approaches for compliance with oil spill prevention requirements for certain entities, and to improve net welfare by reducing the costs of regulation and improving compliance, resulting in greater environmental protection.

**Summary of Legal Basis:**

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which has been replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). No aspects of this action are required by statute or court orders.

**Alternatives:**

EPA considered alternative options for various aspects of this rulemaking in the December 2005 proposed rule, following receipt of public comments, and through logical outgrowth of the proposed rule. To address streamlined requirements for a defined set of "qualified facilities," alternative options included: (1) providing an

indefinite extension of deadlines or a suspension of all SPCC requirements; and (2) a multi-tiered structure of requirements based on a facility's total regulated storage based on the SBA proposal described in the Certain Facilities NODA published last year. To address streamlined requirements for small oil-filled operational equipment, alternative approaches considered included: (1) an option similar to the qualified facilities proposal, in which eligibility of a facility with oil-filled operational equipment would be determined by considering capacity thresholds and reportable discharge history from any oil-filled operational equipment; (2) a tiered set of requirements for electrical and other oil-filled operational equipment; (3) providing an indefinite extension of the Plan revision and implementation dates for certain types of oil-filled operational equipment; and (4) suspending all SPCC requirements for certain types of oil-filled operational equipment. For motive power containers greater than 55 gallons in size, alternative options included: (1) exemption of all motive power containers, except motive power containers on aircraft and mining equipment; (2) exemption of all motive power containers below a certain gallon threshold; and (3) exclusion of motive power containers only from the facility storage capacity calculation and bulk storage container requirements.

#### Anticipated Cost and Benefits:

Considered separately and applying a 7 percent discount rate, today's proposed regulatory changes could yield annualized compliance cost savings, in 2005 dollars, of about \$38 million for the "Qualified Facility" option, \$39 to \$67 million for "Oil-Filled Equipment" option (assuming 25 to 75 percent of facilities with oil-filled equipment affected); \$1 million to \$5 million for the "Motive Power" exemption (assuming 10 to 50 percent of facilities with motive power containers affected); and \$17 million to \$51 million for the "Mobile Refuelers" exemption (assuming 25 to 75 percent of facilities with mobile refuelers affected). The main benefit of the rule is the reductions in compliance costs due to streamlined requirements. EPA does not believe that these cost reductions would be offset by any significant losses in environmental protection.

#### Risks:

EPA has designed the final rule to minimize increases in environmental risk. Although the final rule may

increase the risk of discharge by an unknown magnitude by streamlining the rule for certain owners and operators of facilities, EPA believes that any environmental impact will be minimal, and will be offset by the benefits of increased compliance with the SPCC rule.

#### Timetable:

Action	Date	FR Cite
NODA re: Certain Facilities	09/20/04	69 FR 56184
NODA re: Oil-filled and Process Equipment	09/20/04	69 FR 56182
NPRM	12/12/05	70 FR 73524
Final Action	12/00/06	

#### Regulatory Flexibility Analysis Required:

No

#### Small Entities Affected:

No

#### Government Levels Affected:

Federal, State, Local, Tribal

#### Additional Information:

SAN No. 2634.3; EPA publication information: NODA re certain facilities - <http://www.epa.gov/fedrgstr/EPA-WATER/2004/September/Day-20/w21065.htm>; Split from RIN 2050-AG16.

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RIN: 2050-AG23

#### EPA

### 130. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM 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, 1318, 1342, 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 (P.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 Cost 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	12/00/06	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

Governmental Jurisdictions

**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**

**131. 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 vacancies 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 proposed 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 discharge. The proposed 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 Cost 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 FR 37744
Final Action	06/00/07	

**Regulatory Flexibility Analysis Required:**

Undetermined

**Government Levels Affected:**

Federal, State

**Additional Information:**

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

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**RIN:** 2040-AE80

**EPA**

**132. 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 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:**

The legal basis is 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 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 Cost 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	03/00/07	

**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>



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**RIN:** 2040-AE86

**EPA**

**133. • 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 related to adoption and revision of standards, monitoring, waterbody assessment, TMDL development, and NPDES permitting. Also, EPA published a national advisory for fish consumption due to mercury in March 2003; the implementation guidance will clarify the relationship between this advisory and the recommended criterion. Since atmospheric deposition is considered to be a major source of mercury for many waterbodies, implementing this

criterion involves coordination across many 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. EPA expects that, as a result of the revised methylmercury water quality criterion, together with a more sensitive method for detecting mercury in effluent and the water column, and increased monitoring of previously unmonitored waterbodies, the number of waterbodies that states report on CWA section 303(d) lists as impaired due to methylmercury contamination might continue to increase. 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 the new 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 various media and program areas.

**Summary of Legal Basis:**

N/A

**Alternatives:**

N/A

**Anticipated Cost and Benefits:**

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

**Risks:**

N/A

**Timetable:**

Action	Date	FR Cite
Final Document	01/00/07	

**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:**

www.epa.gov/waterscience/criteria/methylmercury

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**RIN:** 2040-AE87

**EPA**

**134. TOXICS RELEASE INVENTORY REPORTING BURDEN REDUCTION RULE**

**Priority:**

Other Significant

**Legal Authority:**

42 USC 11023 et seq

**CFR Citation:**

40 CFR 372

**Legal Deadline:**

None

**Abstract:**

The primary goal of this effort by EPA is to reduce burdens associated with Toxics Release Inventory (TRI) reporting while at the same time continuing to provide valuable information to the public consistent with the goals and statutory requirements of the TRI program.

**Statement of Need:**

EPA is looking to explore various options with the intention of identifying a specific burden reduction initiative that effectively lessens the burden on facilities but at the same time ensures that TRI continues to provide communities with the same high level of significant chemical release and other waste management information.

**Summary of Legal Basis:**

Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990.

**Alternatives:**

Still under analysis.

**Anticipated Cost and Benefits:**

Still under analysis.

**Risks:**

Not Applicable.

**Timetable:**

Action	Date	FR Cite
NPRM	10/04/05	70 FR 57822
Final Action	12/00/06	

**Regulatory Flexibility Analysis Required:**

No

**Small Entities Affected:**

No

**Government Levels Affected:**

Federal, State

**Additional Information:**

SAN No. 4896; EPA publication information: NPRM - <http://www.epa.gov/fedrgstr/EPA-WASTE/2005/October/Day-04/f19710.htm>

**URL For More Information:**

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

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**RIN:** 2025-AA14

**BILLING CODE** 6560-50-S