ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

EPA-HQ-OAR-2006-0085 [FRL-8207-1]

Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission Standards for Hazardous Air Pollutants for Source Categories to allow extensions to the deadline imposed for source owners and operators to conduct initial or other required performance tests in certain specified circumstances. The General Provisions do not currently provide for extensions of the deadlines for conducting performance tests.

DATES: Comments must be received on or before [Insert date 90 days after publication in the FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0085, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories, Docket ID No. EPA-HQ-OAR-2006-0085, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., N.W., Washington, DC 20503.
- Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, N.W., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0085. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the

use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Revisions to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants for Source Categories Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., N.W., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions concerning today's proposed rule, please contact Ms. Lula Melton, U.S.

EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division (C304-02), Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2910; fax number: (919) 541-4511; e-mail address "melton.lula@epa.gov."

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to any source whose owner or operator is required to conduct performance testing to demonstrate compliance with applicable standards under the General Provisions for Standards of Performance for New Stationary Sources, for National Emission Standards for Hazardous Air Pollutants, and for National Emission Standards for Hazardous Air Pollutants for Source Categories.

B. What should I consider as I prepare my comments for EPA?

Do not submit information containing Confidential Business Information (CBI) to EPA through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Office of Air Quality Planning and Standards, Research

Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2006-0085. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's proposed rule is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control.

D. How is this document organized?

The information presented in this preamble is organized as follows:

II. Summary of Proposed Amendments and Rationale

A. What are the proposed requirements?

The proposed rule would allow source owners or operators, in the event of a force majeure, to petition the Administrator for an extension of the deadlines by which they are required to conduct initial and subsequent performance tests required by applicable regulations. Performance tests required as a result of enforcement orders or enforcement actions are not covered by this rule

because enforcement agreements contain their own force majeure provisions. A force majeure would be defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator must notify the Administrator, in writing, as soon as practicable following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or caused a delay in testing beyond the regulatory deadline. The owner or operator must provide a written description of the event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date

by which the owner or operator proposes to conduct the performance test. The test must be conducted as soon as practicable after the force majeure occurs.

A. Why are we amending the requirements for performance tests in the General Provisions?

We recognize that there may be circumstances beyond a source owner's or operator's control constituting a force majeure event that could cause an owner or operator to be unable to conduct performance tests before the regulatory deadline. We are proposing this rule to provide a mechanism for consideration of these force majeure events and granting of extensions where warranted. Under current rules, a source owner or operator who is unable to comply with performance testing requirements within the allotted timeframe due to a force majeure is regarded as being in violation and subject to enforcement action. As a matter of policy, EPA has exercised enforcement discretion when addressing such violations. However, where circumstances beyond the control of the source owner or operator constituting a force majeure prevent the performance of timely performance tests, we believe that it is appropriate to provide an opportunity to such owners and operators to make good faith demonstrations and obtain extensions of the

performance testing deadline where approved by the Administrator in appropriate circumstances.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Reviews

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. We have determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR No. 2226.01.

The proposed rule would require a written notification only if a plant owner or operator needs an extension of a performance test deadline due to certain rare events, such as acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected

facility. Since EPA believes such events will be rare, the projected cost and hour burden will be minimal.

The increased annual average reporting burden for this collection (averaged over the first 3 years of the ICR) is estimated to total 6 labor hours per year at a cost of $377.52. This includes one response per year from six respondents for an average of 1 hour per response. No capital/startup costs or operation and maintenance costs are associated with the proposed reporting requirements. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is

not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2006-0085. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See "Addresses" section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [insert date of publication in the FEDERAL REGISTER], a comment to OMB is best assured of having its full effect if OMB receives it by [insert 30 days after publication in the FEDERAL REGISTER]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Extensions to

deadlines for conducting performance tests will provide flexibility to small entities and reduce the burden on them by providing them an opportunity for additional time to comply with performance test deadlines during force majeure events.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative

other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The maximum total annual cost of this proposed rule for any year has been estimated to be less than $435.00. Thus, today's proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that the proposed rule contains no regulatory requirements that might significantly or

uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the proposed rule requirements will not

supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications as specified in Executive Order 13175. This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, this proposed rule has been determined not to be

economically significant as defined under Executive Order 12866.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards. New test methods are not being proposed in this rulemaking, but EPA is allowing for extensions of the regulatory deadlines by which owners or operators are required to conduct performance tests when a force majeure is about to occur, occurs, or has occurred which prevents owners or operators from testing within the regulatory deadline. Therefore, NTTAA does not apply.

List of Subjects in 40 CFR Parts 60, 61, and 63

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 3, 2006.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, parts 60, 61, and 63 of the Code of Federal Regulations are proposed to be amended as follows:

PART 60--[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A--[Amended]

2.Section 60.2 is amended by adding, in alphabetical order, a definition of the term "Force majeure" to read as follows:

§ 60.2 Definitions.

* * * * *

Force majeure means, for purposes of §60.8, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

* * * * *

3. Section 60.8 is amended by revising paragraph (a) to read as follows:

§ 60.8 Performance tests.

(a) Except as specified in paragraphs (a)(1),(a)(2), (a)(3), and (a)(4) of this section, within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, or at such other times specified by this part, and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

(1) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing, as soon as practicable following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or caused a delay in testing beyond the regulatory deadline.

(2) The owner or operator shall provide to the Administrator a written description of the force majeure

event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(3) If in the Administrator's judgment, an owner's or operator's request for an extension of the performance test deadline is warranted, the Administrator will approve the extension. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(4) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(1), (2), and (3) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

* * * * *

PART 61 – [AMENDED]

4. The authority citation for part 61 continues to read as follows:

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

Subpart A – [Amended]

5. Section 61.02 is amended by adding, in alphabetical order, a definition of the term "Force majeure" to read as follows:

§ 61.02 Definitions.

* * * * *

Force majeure means, for purposes of §61.13, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

* * * * *

6. Section 61.13 is amended by revising paragraph (a) introductory text, and adding paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) to read as follows:

§ 61.13 Emission tests and waiver of emission tests.

(a) Except as provided in paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section, if required to do emission testing by an applicable subpart and unless a

waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source:

* * * * *

(3) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the delegated agency, in writing, as soon as practicable following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraphs (a)(1) or (a)(2) of this section or beyond a deadline established pursuant to the requirements under paragraph (b) of this section.

(4) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(5) If in the Administrator's judgment, an owner's or operator's request for an extension of the performance test deadline is warranted, the Administrator will approve the extension. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(6) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(3), (a)(4), and (a)(5) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

* * * * *

PART 63--[AMENDED]

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

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

Subpart A--[Amended]

8. Section 63.2 is amended by adding, in alphabetical order, a definition of the term "Force majeure" to read as follows:

§ 63.2 Definitions.

* * * * *

Force majeure means, for purposes of §63.7, an event that will be or has been caused by circumstances beyond the

control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

* * * * *

9. Section 63.7 is amended by revising paragraph (a)(2) introductory text and paragraph (a)(2)(ix) and by adding paragraph (a)(4) to read as follows:

§ 63.7 Performance testing requirements.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

* * * * *

(ix) Except as provided in paragraph of (a)(4) of this section, when an emission standard promulgated under this part is more stringent than the standard proposed (see §63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

* * * * *

(4) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure:

(i) The owner or operator shall notify the delegated agency, in writing, as soon as practicable following the date the owner or operator first knew, or through due diligence should have known, that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraphs (a)(2), (a)(3) of this section, or elsewhere in this part.

(ii) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(iii) If in the Administrator’s judgment, an owner’s or operator’s request for an extension of the performance test deadline is warranted, the Administrator will approve the extension. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(iv) Until an extension of the performance test deadline has been approved by the Administrator under

paragraphs (a)(4)(i), (a)(4)(ii), and(a)(4)(iii) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

* * * * *

10. Section 63.91 is amended by adding paragraph (g)(1)(i)(O) to read as follows:

§ 63.91 Criteria for straight delegation and criteria common to all approval options.

* * * * *

(g) * * *

(1) * * *

(i)* * *

(O) Section 63.7(a)(4), Extension of Performance Test Deadline

* * * * *