

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g) of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1711 to read as follows:

#### § 165.1711 Security Zones; Waters of the Seventeenth Coast Guard District.

(a) *Definitions.* As used in this section—

*Alaska Marine Highway System vessel ("AMHS vessel")* means the M/V AURORA, M/V CHENEGA, M/V COLUMBIA, M/V FAIRWEATHER, M/V KENNICOTT, M/V LECONTE, M/V LITUYA, M/V MALASPINA, M/V MATANUSKA, M/V TAKU, and the M/V TUSTUMENA.

*Designated on Scene Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.85, to act on his or her behalf, or other Federal, State or local law enforcement agency personnel designated by the COTP.

*Escorted HCPV or AMHS vessel* means a HCPV or AMHS vessel that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State, Federal or local law enforcement assets displaying the applicable agency markings and or equipment associated with the agency.

*Federal Law Enforcement Officer* means any federal government law enforcement officer who has authority to enforce federal criminal laws.

*High Capacity Passenger Vessel ("HCPV")* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

*State law enforcement Officer* means any State or local government law enforcement officer who has authority to enforce State or local criminal laws.

(b) *Location.* The following areas are security zones: All waters within 100 yards around escorted High Capacity Passenger Vessels or escorted Alaska Marine Highway System vessels in the navigable waters of the Seventeenth

Coast Guard District as defined in 33 CFR 3.85–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 100 yards of an escorted HCPV or escorted AMHS vessel during their transits within the navigable waters of the Seventeenth Coast Guard District.

(2) Moored or anchored vessels that are overtaken by this moving zone must remain stationary at their location until the escorted vessel maneuvers at least 100 yards away.

(3) The local Captain of the Port may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(4) Persons desiring to transit within 100 yards of a moving, escorted HCPV or AMHS vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz) to receive permission.

(5) If permission is granted to transit within 100 yards of an escorted HCPV or AMHS vessel, all persons and vessels must comply with the instructions of the designated on scene representative.

Dated: October 18, 2005.

**James C. Olson,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.*

[FR Doc. 05–21576 Filed 10–28–05; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[OAR–2002–0056; FRL–7990–2]

RIN 2060–AN32

### National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of reconsideration of final rule; proposed amendments.

**SUMMARY:** On September 13, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters. In this action, EPA is proposing a limited number of amendments to the NESHAP. In response to a petition for reconsideration, EPA is proposing and

requesting comment on an amendment allowing for consolidated testing of commonly vented boilers under the emission averaging provision. In addition, EPA is proposing amendments and technical corrections to the final rule to clarify some applicability and implementation issues raised by stakeholders subject to the final rule.

**DATES: Comments.** Comments must be received on or before December 15, 2005.

**Public Hearing.** If anyone contacts EPA requesting to speak at a public hearing by November 10, 2005, a public hearing will be held on November 15, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

**ADDRESSES: Comments.** Submit your comments, identified by Docket ID No. OAR-2002-0058 (Legacy Docket ID No. A-96-47) by one of the following methods:

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

- Agency Web site: <http://www.epa.gov/docket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [a-and-rdocket@epa.gov](mailto:a-and-rdocket@epa.gov).
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. 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. OAR-2002-0058 (Legacy Docket ID No. A-96-47). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal

regulations.gov websites are "anonymous access" systems, which means that 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 EDOCKET or 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.

**Public Hearing.** If a public hearing is held, it will be held on November 15, 2005 at the EPA facility, Research Triangle Park, NC, or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice.

**Docket.** EPA has established an official public docket for today's notice, including both Docket ID No. OAR-2002-0058 and Legacy Docket ID No. A-96-47. The official public docket consists of the documents specifically referenced in today's notice, any public comments received, and other information related to the notice. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's notice. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301

Constitution Avenue, NW., 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 and Radiation Docket and Information Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For general and technical information, contact Mr. James Eddinger, Combustion Group, Emission Standards Division, Mailcode: C439-01, U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541-5426; fax number: (919) 541-5450; e-mail address: [eddingejim@epa.gov](mailto:eddingejim@epa.gov). For questions about the public hearing, contact Ms. Pamela Garrett, Combustion Group, Emission Standards Division, Mailcode: C439-01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-7966; e-mail address: [garrett-pamela@epa.gov](mailto:garrett-pamela@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

- I. General Information
  - A. Does this notice apply to me?
  - B. How do I submit CBI?
  - C. How do I obtain a copy of this document and other related information?
- II. Background
- III. Today's Action
- IV. Reconsideration of Emissions Averaging Provision
- V. Proposed Clarifying Amendments and Technical Corrections
  - A. What clarifications are proposed to the definitions?
  - B. What are the proposed corrections?
  - C. What are the impacts associated with the amendments?
- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultations and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act

#### **I. General Information**

##### *A. Does this notice apply to me?*

Categories and entities potentially affected by today's notice include:

Category	SIC code <sup>a</sup>	NAICS code <sup>b</sup>	Examples of potentially regulated entities
Any industry using a boiler or process heater as defined in the final rule.	24	321	Manufacturers of lumber and wood products.
	26	322	Pulp and paper mills.
	28	325	Chemical manufacturers.
	29	324	Petroleum refineries, and manufacturers of coal products.
	30	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	33	331	Steel works.
	34	332	Electroplating, plating, polishing, anodizing, and coloring.
	37	336	Manufacturers of motor vehicle parts and accessories.
	49	221	Electric, gas, and sanitary services.
	80	622	Health services.
	82	611	Educational services.

<sup>a</sup> Standard Industrial Classification.

<sup>b</sup> North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's notice. To determine whether your facility is affected by today's notice, you should examine the applicability criteria in 40 CFR 63.7485 of the final rule. If you have questions regarding the applicability of today's notice to a particular entity, consult Mr. Jim Eddinger listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### B. How do I submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI 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 the 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. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of today's notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at <http://www.epa.gov/ttn/oarpg>. The

TTN provides information and technology exchange in various areas of air pollution control.

#### II. Background

On September 13, 2004 (69 FR 55218), we promulgated the NESHAP for industrial, commercial, and institutional boilers and process heaters as subpart DDDDD of 40 CFR part 63. In accordance with section 112(d) of the Clean Air Act (CAA), the NESHAP contains technology-based emissions standards reflecting the maximum achievable control technology (MACT) and health-based compliance alternative for certain threshold pollutants. We proposed these standards for industrial, commercial, and institutional boilers and process heaters on January 13, 2003 (68 FR 1660).

In the preamble for the proposed rule, we discussed our consideration of a bubbling compliance alternative and requested comment on incorporating a bubbling compliance alternative (i.e., emission averaging) into the final rule as part of EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced. (See 68 FR 1686.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the emissions averaging approach. We received a total of 40 public comment letters regarding the emissions averaging approach in the proposed rule during the comment period. We summarized major public comments on the proposed emissions averaging approach, along with our responses to those comments, in the preamble to the final rule (69 FR 55238) and in the comment response

memorandum "Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised) (RTC Memorandum) that was placed in the docket for the final rule.

In the final rule, we adopted an emissions averaging provision for existing large solid fuel boilers. The procedures that affected sources must use to demonstrate compliance through emissions averaging were promulgated in 40 CFR 63.7522. (See 69 FR 55257.) For each existing large solid fuel boiler in the averaging group, the emissions are capped at the emission level being achieved on the effective date of the final rule (November 12, 2004). Under emissions averaging, compliance must be demonstrated on a 12-month rolling average basis, determined at the end of every calendar month. If a facility uses this option, it must also develop and submit an implementation plan to the applicable regulatory authority for review and approval no later than 180 days before the date that the facility intends to demonstrate compliance.

Following promulgation of the final rule, the Administrator received petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from General Electric (GE), the Natural Resources Defense Council (NRDC), and Environmental Integrity Project (EIP).<sup>1</sup>

<sup>1</sup> In addition to the petitions for reconsideration, two petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC, Sierra Club, and EIP (No. 04-1385, D.C. Cir.) and American Municipal Power—Ohio and the Ohio cities of Dover, Hamilton, Orrville, Painesville, Shelby, and St. Marys (No. 04-1386, D.C. Cir.). The two cases have been consolidated. Eleven additional parties have filed petitions to intervene: American Home Furnishings Alliance, Council of Industrial Boiler Owners, American Forest and Paper Association, American Chemistry Council, National Petrochemical and Refiners Association, American

Under this section, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

GE requested that EPA reconsider portions of the emissions averaging provision that it believes could not have been practicably addressed during the public comment period. In the alternative, GE requested clarification that the final rule already allows for consolidated testing of commonly vented boilers.

By a letter dated April 27, 2005, we informed GE that we intended to grant their petition for reconsideration. We indicated in that letter that we would respond to the petition by publishing this notice of proposed rulemaking.

### III. Today's Action

Today, we are granting reconsideration of the issue raised in the GE petition for reconsideration. We agree that it was impracticable for GE to raise its concern about implementation of the emissions averaging provision until after the public comment period when the final regulatory text was promulgated. Although we believe we provided adequate notice and opportunity to comment on the emissions averaging alternative, the specific regulatory text in 40 CFR 63.7522 was not included in the notice of proposed rulemaking. Thus, we believe it is appropriate to grant reconsideration to provide the public with the opportunity to comment on how the emissions averaging alternative can be applied to sources where boilers and process heaters are vented to common stacks. As a result, we are requesting comment on this issue and a proposed amendment to 40 CFR 63.7522 that would clarify the emissions averaging provision and allow consolidated testing of commonly vented boilers.

In a separate notice, we have granted reconsideration of several of the issues raised in the NRDC and EIP petition for reconsideration. (See 70 FR 36907, June 27, 2005.) In that notice, we requested comment on provisions in appendix A of subpart DDDDD and the health-based compliance alternative for total selected metals reflected in 40 CFR 63.7507(b).

Also, today we are proposing amendments to the final rule to address several issues that were raised related to

applicability and implementation of the requirements in subpart DDDDD of 40 CFR part 63. The proposed amendments to the final rule address these issues, correct other inconsistencies that were discovered following promulgation, and clarify some common applicability questions.

### IV. Reconsideration of Emissions Averaging Provision

Through today's notice, we request comments on how the emissions averaging compliance alternative should be implemented when boilers are vented to common stack and on the proposed amendment to 40 CFR 63.7522 addressing consolidated testing of commonly vented existing solid fuel boilers. Stakeholders who would like for us to reconsider comments relevant to this issue that they submitted to us previously should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process.

#### 1. Background

In the notice of proposed rulemaking, we described approaches that we might use to implement an emissions averaging compliance alternative. (See 68 FR 1686.) We discussed an emissions averaging option that would allow owners and operators to set emissions limits for each existing boiler in the same subcategory such that if these limits are met, the total emissions from all existing boilers in the subcategory would be less than or equal to the proposed emissions limit for the subcategory. In addition, we also discussed that the emissions averaging option would not be applicable to new sources and could only be used between boilers in the same subcategory. We solicited comments on the emissions averaging option and whether EPA should include the emissions averaging option in the final rule.

In the final rule, we included an emissions averaging provision because we agreed with commenters that emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT levels. We also recognized that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will achieve no less emissions reductions than unit by unit implementation of the MACT requirements.

The emissions averaging provision in the final rule requires each facility that intends to utilize emissions averaging to

submit an implementation plan for emissions averaging to the applicable regulatory authority for review and approval. In this implementation plan, the facility must include the identification of: (1) All units in the averaging group; (2) the control technology installed; (3) the process parameter that will be monitored; (4) the specific control technology or pollution prevention measure to be used; (5) the test plan for the measurement of particulate matter (or selected total metals), hydrogen chloride, or mercury emissions; and (6) the operating parameters to be monitored for each control device. The regulatory authority will not approve emission averaging plans containing averaging between emissions of different types of pollutants, averaging between sources in different subcategories, or averaging that includes new sources or unaffected sources.

In the final rule, we established procedures for demonstrating compliance by emissions averaging and codified them in 40 CFR 63.7522. The preamble to the final rule also contained a summary of our response to significant comments. (See 69 FR 55238.)

GE's concerns regarding the emissions averaging provision relate to the manner in which testing must be conducted to demonstrate compliance. They believe the final rule could be read to impose unreasonable limitations on the use of emissions averaging because the equations used to demonstrate compliance employ a variable defined as the emission rate for each boiler. GE is requesting that we reconsider that the final rule be amended to allow the source to conduct one test on a group of boilers that vents through a common stack rather than to require individual tests on each boiler. In the alternative, GE also requested clarification that the rule already allows for consolidated testing of commonly vented boilers.

#### 2. Proposed Action and Request for Comment

We agree that the current language in the emissions averaging options requires testing of each individual boiler in the averaging group. However, our intent with regard to the emissions averaging option in the final rule was to provide an equivalent, more flexible, and less costly compliance alternative. Since testing emissions from a common stack for a group of boilers would be equivalent to the average emissions calculated from emissions tests on each individual boiler, we are proposing to allow testing of emissions at the common stack under specified situations. Specifically, we are

Petroleum Institute, National Oilseed Processors Association, Coke Oven Environmental Task Force, Utility Air Regulatory Group, and Alliance of Automobile Manufacturers are intervening with regard to the health-based compliance alternatives.

proposing to allow testing of a common stack only for the situations where each of the units vented to the common stack are in the existing solid fuel subcategory. This is because the emissions averaging provision in 40 CFR 63.7522 is only applicable to existing large solid fuel boilers. Therefore, testing of a common stack in these situations will result in demonstrating the average emissions from this particular averaging group of boilers, just as if each boiler was tested individually and their emissions averaged.

Allowing the testing of a common stack for only these specific situations also satisfies the criteria discussed in the preamble to the final rule (69 FR 55239) that EPA has generally imposed on the scope and nature of emissions averaging programs. These criteria include: (1) No averaging between different types of pollutants, (2) no averaging between sources that are not part of the same major source, (3) no averaging between sources within the same major source that are not subject to the same NESHAP, and (4) no averaging between existing sources and new sources. The proposed amendment fully satisfies each of these criteria.

GE is seeking clarification on two different common stack situations. In one situation, the exhaust from three existing large solid fuel boilers are combined and vented through a common emissions control system to a common stack. In the other situation, the exhaust from two existing large solid fuel boilers are each individually controlled prior to being vented to a common stack.

In the proposed regulatory provisions set forth below, we propose to treat a group of boilers that vents through a common emissions control system to a common stack as a single existing solid fuel boiler for purposes of subpart DDDDD. The common control situation is more of an applicability issue. This common control issue has been addressed in past rulemakings (e.g., Standard of Performance for Primary Aluminum Reduction Plants, 40 CFR 60.190) where the affected source was defined as an uncontrolled unit, unit which is controlled individually, or a group of units ducted to a common control system. A group of similar units ducted through a common control system would be determined to be a single controlled source for the purpose of demonstrating compliance. Thus, we are proposing this amendment to address and clarify applicability and implementation issues.

However, we propose a slightly different approach for averaging groups

that vent to a common stack through more than one emissions control system. These distinct approaches are necessary to ensure that a source with more than one emissions control system can demonstrate continuous compliance at each emissions control system.

Where a group of boilers vents to a common stack through more than one emission control system, continuous compliance will be demonstrated according to the methods specified in table 8 to subpart DDDDD. If each of the boilers venting to the common stack have an applicable opacity operating limit, then a single continuous opacity monitoring system (COMS) may be located in the common stack instead of each duct to the common stack. If any of the boilers venting to the common stack do not have an applicable opacity operating limit, then the appropriate operating limit in tables 2 through 4 to subpart DDDDD that applies to each boiler must be met.

Testing of the common stack must be conducted when each boiler is operated under representative testing conditions as specified in the National Stack Testing Guidance issued by EPA on February 2, 2004.

In addition, we are proposing that the common stack situations described above may be treated as a separate single emission point for purpose of including in a larger emissions averaging group with other existing large solid fuel boilers located at the facility.

We are not requesting comment on other aspects of the emissions averaging provision.

## V. Proposed Clarifying Amendments and Technical Corrections

We identified minor drafting errors and inadvertent omissions after promulgation of the industrial boiler and process heater NESHAP. Thus, in addition to reconsidering the issue discussed above, we are proposing to make the following definition clarifications and corrections to 40 CFR part 63, subpart DDDDD.

### A. What clarifications are proposed to the definitions?

We are proposing to insert the word "other" in the definitions in 40 CFR 63.7575 for "small gaseous fuel subcategory" and "small liquid fuel subcategory," in order to make these definitions consistent with the definition for "small solid fuel subcategory." This omission has caused confusion in determining the applicability of firetube boilers with heat input capacities greater than 10

million British thermal units (Btu) per hour.

In addition, we are proposing to amend the definitions in 40 CFR 63.7575 for "large gaseous fuel subcategory," "large liquid fuel subcategory," and "large solid fuel subcategory" to make them consistent with the definitions in 40 CFR 63.7575 for the various "limited use" subcategories. We are proposing to replace the phrase "has an annual capacity factor of greater than 10 percent" with the phrase "does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent" to clarify that only large units having a permit limitation on their annual average capacity factor of 10 percent or less are considered in the limited use subcategories.

We are also proposing to amend the definitions of "firetube boiler" and "watertube boiler" in 40 CFR 63.7575 to address boilers designed with both firetubes and watertubes, commonly referred to as "hybrid boilers." EPA is aware of three "hybrid boiler" designs: (1) Watertube boilers that incorporate a secondary firetube section to extract additional heat from the combustion gases; (2) firetube boilers designed with watertubes that function to improve the operation and efficiency of the firetube boiler, not to increase steam generating capacity; and (3) boilers designed with both firetubes and watertubes, in which both the firetubes and watertubes function for the purpose of steam generation.

We are proposing to classify watertube boilers that incorporate firetubes for additional heat recovery as watertube boilers for the purpose of the final rule since the unit combustion zone incorporates a watertube design. As discussed in the proposal (68 FR 1671), it is the design of the boiler's combustion zone that will influence the formation of organic hazardous air pollutants (HAP) emissions and was one of the bases for creating the subcategories.

We are proposing to treat firetube boilers that are designed with watertubes that function for purposes other than for steam generation, for example to reduce maintenance, enhance efficiency, reduce emissions, or increase fuel flexibility as firetube boilers for the purpose of the final rule since the unit combustion zone incorporates a firetube design. Again, it is the design of the boiler's combustion zone that will influence the formation of organic HAP emissions and was one of the bases for creating the subcategories.

EPA is aware that there may be other hybrid designs that are not specifically

addressed by the amended definitions we are proposing today. Applicability determinations for designs other than those described above should be addressed on a case-by-case basis.

We are also proposing to add in 40 CFR 63.7575 a definition for the term "equivalent," as this term is used in table 6 to subpart DDDDD, to address questions concerning what types of test methods are considered equivalent. In addition, there is some confusion regarding how the term "equivalent," as used in table 6 to subpart DDDDD, is different from the terms "alternative analytical method" used in 40 CFR 63.7521 and "alternative test method," as defined in 40 CFR 63.2 of the MACT General Provisions. This has raised the question of whether the definitions of intermediate, major, and minor changes to a test method in 40 CFR 63.90, apply in determining delegable authorities. The answer is that EPA intended for the determination of "equivalent" for table 6 to subpart DDDDD purposes, to be a category I authority, potentially delegable to the State. However, EPA neglected to clearly convey that message or provide a clear definition of "equivalent" for table 6 to subpart DDDDD purposes to assure national consistency. Because there are a large number of fuel types it is not practical to identify and list all acceptable (equivalent) combinations of methods and fuels in table 6 to subpart DDDDD. We do believe, however, that if we make mandatory the use of a voluntary consensus standard (VCS) or EPA method that states it is intended to at least match the fuel matrix (solid, liquid, or gas) central to the definition of equivalent (for table 6 to subpart DDDDD), then this can be a category I delegable authority. A negative finding of equivalent would then invoke the definitions of minor, intermediate, or major changes to a test method. Following this logic, we have developed a definition of "equivalent" to determine if an alternate fuel analysis procedure is equivalent for table 6 to subpart DDDDD purposes. An alternative is any deviation or modification from the published VCS or EPA method as written. These must be specifically noted and the need or reason for the alternative explained. In general, alternatives that are necessary or improve the data quality will be given priority review while those of convenience only will be reviewed as time permits. Because of the potential for a large number of sample analysis plans containing equivalent and alternative methods and procedures, we encourage the applicant to clearly

denote alternative requests from equivalent requests and to provide a complete rationale in order to expedite review.

#### *B. What are the proposed corrections?*

A list of boilers and process heaters that are not subject to subpart DDDDD of 40 CFR part 63 are contained in 40 CFR 63.791. As stated in the proposal preamble, our intention was to exempt from the final rule any units that are already or will be subject to regulation for HAP under another standard. (See 69 FR 1663.) In terms of electric utility steam generating units, regulations for HAP were only under development at proposal and promulgation of subpart DDDDD of 40 CFR part 63 and, therefore, we were unable to cite the exemption for electric utility steam generating units to a specific regulation. The exemption cited in 40 CFR 63.7491(c) for electric utility steam generating units is the definition of electric utility steam generating units contained in section 112(a)(8) of the CAA. On March 29, 2005 (70 FR 15995), EPA revised the regulatory finding that it issued in December 2000, removing electric utility steam generating units from the CAA section 112 source category list. EPA instead established standards of performance for mercury from new and existing electric utility steam generating units under the authority of section 111 of the CAA. These standards of performance (subparts Da and HHHH of 40 CFR part 60) regulating mercury from electric utility steam generating units were promulgated on May 18, 2005 in the Clean Air Mercury Rule. (See 70 FR 28606.) After we promulgated that rule, it was brought to our attention that the scope of the exemption in subpart DDDDD of 40 CFR part 63 for electric utility steam generating units was unclear. Confusion has resulted because subparts Da and HHHH employ different definitions to determine applicability, consistent with the historical applicability and definition determinations under CAA section 111 and Acid Rain Programs. (See 70 FR at 28609.) Thus, to clarify applicability of the final rule, we are proposing to modify 40 CFR 63.7491(c) to exclude "an electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) and a Mercury (Hg) Budget unit covered by 40 CFR part 60, subpart HHHH." The term "electric utility steam generating unit" is defined in 40 CFR 63.7575 of subpart DDDDD in accordance with the statutory definition in section 1121(a)(8) of the CAA.

In 40 CFR 63.7522, we inadvertently omitted the equation for determining

continuous compliance with the emission limits when using emissions averaging. Under the emissions averaging provision, continuous compliance is based on a 12-month rolling average. We corrected this omission by adding equation 4A to 40 CFR 63.7522(f).

In 40 CFR 63.7525, we inadvertently omitted the requirement for installing and operation of an oxygen monitor. According to the work practice standard for carbon monoxide (CO) in table 1 to subpart DDDDD, a new affected source must correct the CO data to a certain percent oxygen. However, 40 CFR 7525(a) never explicitly states that an oxygen monitor is required. We received inquiries on whether an oxygen monitor is required to be installed if no oxygen monitor is currently in place. Since the CO standard is only applicable to new units, we assumed that all new units above 100 million Btu per hour heat input would also be subject to the new source performance standard (subpart Db of 40 CFR part 60) for industrial boilers which requires an oxygen monitor as part of its monitoring requirement. Thus, we amended 40 CFR 63.7525 to clarify that a corresponding oxygen monitor is required when a CO monitor is required.

As suggested by the American Society for Testing and Materials (ASTM), several of the listed ASTM test methods in table 6 to subpart DDDDD are being amended with updated ASTM test methods.

#### *C. What are the Impacts Associated With the Amendments?*

The proposed amendments contained in this action are corrections that are intended to clarify, but not change, the coverage of the final rule. The amendments will not affect the estimated emissions reductions or the control costs for the final rule. The clarifications and corrections should make it easier for owners and operators and for local and State authorities to understand and implement the requirements.

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

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "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 entitlement, 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.

Pursuant to the terms of Executive Order 12866, it has been determined that today’s proposed amendments do not constitute a “significant regulatory action” because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

#### B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted for approval to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (Information Collection Request No. 2028.01 and OMB Control Number 2060–0551). The information collection requirements are not enforceable until OMB approves them.

Today’s notice of reconsideration imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the notice, the ICR has not been revised.

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

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

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

#### 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 impact of today’s notice of reconsideration on small entities, a small entity is defined as: (1) A small business having no more than 500 to 750 employees, depending on the business’ NAICS code; (2) a small governmental jurisdiction that is a government of a city, country, 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 that is not dominant in its field.

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

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private section, of \$100 million or more in any 1 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’s regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today’s notice of reconsideration does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Although the final rule had annualized costs estimated to range from \$690 to \$860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), today’s notice does not add new requirements that would increase this cost. Thus, today’s notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today’s notice does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today’s notice of reconsideration is not subject to section 203 of the UMRA.

#### E. Executive Order 13132: Federalism

Executive Order 13132 (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” are defined in the Executive Order to

include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Today’s notice of reconsideration 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. The requirements discussed in today’s notice will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today’s notice of reconsideration.

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

Executive Order 13175 (65 FR 67249, November 6, 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.” “Policies that have tribal implications” are defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, 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.”

Today’s notice of reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today’s notice of reconsideration.

#### *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 of children. If the regulatory action meets both criteria,

EPA 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 EPA.

Today’s notice of reconsideration is not subject to the Executive Order because EPA does not have reasons to feel that the environmental health or safety risks associated with the emissions addressed by this notice present a disproportionate risk to children. This demonstration is based on the fact that the noncancer human health values we used in our analysis at promulgation (e.g., reference concentrations) are determined to be protective of sensitive subpopulations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by facilities that meet the eligibility criteria for the health-based compliance alternatives will be sufficiently low so as not be a concern for anyone in the population, including children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to [the product, substance or other vector proposed for regulation.]

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

Today’s amendments involve technical standards. EPA cites the following standards in the proposed rulemaking: (1) American Society for Testing and Materials (ASTM) D2013–04, “Standard Practice for Preparing Coal Samples for Analysis,” (2) ASTM D2234–D2234M–03E01, “Standard Practice for Collection of a Gross Sample of Coal,” (3) ASTM D6721–01, “Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry,” (4) ASTM D3173–03, “Standard Test Method for Moisture in the Analysis Sample of Coal and Coke,” (5) ASTM D4606–03, “Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method,” (6) ASTM D6357–04, “Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry,” (7) ASTM D6722–01, “Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis,” and (8) ASTM D5865–04, “Standard Test Method for Gross Clorific Value of Coal and Coke.”

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. As assessment of these and other voluntary consensus standards is presented in the preamble to the final rule. (See 69 FR 55251, September 13, 2004.)

Table 6 to subpart DDDDD of 40 CFR part 63 list the fuel analysis methods included in the final rule. Under 40 CFR 63.7(f) in subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

#### **List of Subject in 40 CFR Part 63**

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.



Dated: October 21, 2005.

Stephen L. Johnson, Administrator.

For the reasons stated in the preamble, title 40, chapter 1, of the code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraphs (b)(55) through (62) to read as follows:

§ 63.14 Incorporation by reference.

- (b) \* \* \* (55) ASTM D2013-04, Standard Practice for Preparing Coal Samples for Analysis, IBR approved for Table 6 to subpart DDDDD of this part. (56) ASTM D2234-D2234M-03E01, Standard Practice for Collection of a Gross Sample of Coal, IBR approved for Table 6 to subpart DDDDD of this part. (57) ASTM D6721-01, Standard Test Method for Determination of Chlorine in Coal by Oxidative Hydrolysis Microcoulometry, IBR approved for Table 6 to subpart DDDDD of this part. (58) ASTM D3173-03, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part. (59) ASTM D4606-03, Standard Test Method for Determination of Arsenic and Selenium in Coal by the Hydride Generation/Atomic Absorption Method, IBR approved for Table 6 to subpart DDDDD of this part. (60) ASTM D6357-04, Standard Test Methods for Determination of Trace Elements in Coal, Coke, and Combustion Residues from Coal Utilization Processes by Inductively Coupled Plasma Atomic Emission Spectrometry, Inductively Coupled Plasma Mass Spectrometry, and Graphite Furnace Atomic Absorption Spectrometry, IBR approved for Table 6 to subpart DDDDD of this part. (61) ASTM D6722-01, Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by the Direct Combustion Analysis, IBR approved for Table 6 to subpart DDDDD of this part. (62) ASTM D5865-04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for Table 6 to subpart DDDDD of this part.

Subpart DDDDD—[Amended]

3. Section 63.7491 is amended by revising paragraph (c) to read as follows:

§ 63.7491 Are any boilers or process heaters not subject to this subpart?

(c) An electric utility steam generating unit (including a unit covered by 40 CFR part 60, subpart Da) and a Hg Budget unit covered by 40 CFR part 60, subpart HHHH.

4. Section 63.7522 is amended by revising paragraphs (b) and (c) and by adding paragraphs (f)(3) and (h) through (k) to read as follows:

§ 63.7522 Can I use emission averaging to comply with this subpart?

- (b) Separate stack requirements. For a group of two or more existing large solid fuel boilers that each vent to a separate stack, you may average particulate matter or TSM, HCl and mercury emissions to demonstrate compliance with the limits in Table 1 of this subpart if you satisfy the requirements in paragraphs (c), (d), (e), (f), and (g) of this section. (c) For each existing large solid fuel boiler in the averaging group, the emission rate achieved during the initial compliance test for the HAP being averaged must not exceed the emission level that was being achieved on November 12, 2004 or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on November 12, 2004.

- (f) \* \* \* (3) Until 12 monthly emission rates have been accumulated, calculate and report only the monthly averages. Then, for each subsequent calendar month, use Equation 4A of this section to calculate the 12-month rolling average as a weighted average of the emission rate for the current month and the emission rates for the previous 11 months.

E\_avg = (sum from i=1 to 12 of ER\_i) / 12 (Eq. 4A)

Where: E\_avg = 12-month rolling average emission rate, (pounds per million Btu heat input) ER\_i = Monthly emission rate, for month "i", (pounds per million Btu heat input)

(h) Common stack requirements. For a group of two or more existing large solid fuel boilers, each of which vents through a single common stack that does not receive emissions from units in other subcategories or nonaffected units, you may average particulate matter or TSM, HCl and mercury to demonstrate compliance with the limits in Table 1 of this subpart if you satisfy the requirements in paragraphs (i) or (j) of this section.

(i) For a group of two or more existing large solid fuel boilers, each of which vents through a common emissions control system to a common stack you may treat such averaging group as a single existing solid fuel boiler for purposes of subpart DDDDD and comply with the requirements of this subpart as if the group were a single boiler.

(j) For all other groups of boilers subject to paragraph (h) of this section, the owner or operator shall:

- (1) Conduct performance tests according to procedures specified in § 63.7520 in the common stack; and (2) Conduct monitoring, as appropriate, according to requirements specified in § 63.7525 in the common stack; and (3) Meet the applicable operating limit specified in § 63.7540 and table 8 for each emissions control system. (k) Combination requirements. The common stack of a group of two or more boilers subject to paragraph (h) may be treated as a separate stack for purposes of paragraph (b) of this section and included in an emissions averaging group subject to paragraph (b) of this section.

5. Section 63.7525 of subpart DDDDD is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 63.7525 What are my monitoring, installation, operation, and maintenance requirements?

(a) If you have an applicable work practice standard for carbon monoxide, and your boiler or process heater is in any of the large subcategories and has a heat input capacity of 100 MMBtu per hour or greater, you must install, operate, and maintain a continuous emission monitoring system (CEMS) for carbon monoxide and oxygen according to the procedures in paragraphs (a)(1) through (6) of this section by the compliance date specified in § 63.7495. The carbon monoxide and oxygen shall be monitored at the same location at the outlet of the boiler or process heater.

(1) Each CEMS must be installed, operated, and maintained according to the applicable procedures under Performance Specification (PS) 3 or 4A

of 40 CFR part 60, appendix B, and according to the site-specific monitoring plan developed according to § 63.7505(d).

\* \* \* \* \*

6. Section 63.7575 of subpart DDDDD is amended as follows:

a. By adding a new definition in alphabetical order for "Equivalent".

b. By revising the definitions for "Firetube boiler", "Large gaseous fuel subcategory", "Large liquid fuel subcategory", "Large solid fuel subcategory", "Small gaseous fuel subcategory", "Small liquid fuel subcategory" and "Watertube boiler".

**§ 63.7575 What definitions apply to this subpart?**

\* \* \* \* \*

*Equivalent* means the following only when this term is used in Table 6 to subpart DDDDD:

(1) An equivalent sample collection procedure means a published voluntary consensus standard or practice (VCS) or EPA method that includes collection of a minimum of three composite fuel samples, with each composite consisting of a minimum of three increments collected at approximately equal intervals over the test period.

(2) An equivalent sample compositing procedure means a published VCS or EPA method to systematically mix and obtain a representative subsample (part) of the composite sample.

(3) An equivalent sample preparation procedure means a published VCS or EPA method that: Clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix or; is cited as an appropriate sample preparation standard, practice or method for the pollutant in the chosen VCS or EPA determinative or analytical method.

(4) An equivalent procedure for determining heat content means a published VCS or EPA method to obtain gross calorific (or higher heating) value.

(5) An equivalent procedure for determining fuel moisture content means a published VCS or EPA method to obtain moisture content. If the sample analysis plan calls for determining metals (especially the mercury, selenium, or arsenic) using an aliquot of the dried sample, then the drying

temperature must be modified to prevent vaporizing these metals. On the other hand, if metals analysis is done on an "as received" basis, a separate aliquot can be dried to determine moisture content and the metals concentration mathematically adjusted to a dry basis.

(6) An equivalent pollutant (mercury, TSM, or total chlorine) determinative or analytical procedure means a published VCS or EPA method that clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix and has a published detection limit equal or lower than the methods listed in Table 6 to subpart DDDDD for the same purpose.

\* \* \* \* \*

*Firetube boiler* means a boiler in which hot gases of combustion pass through the tubes and water contacts the outside surfaces of the tubes. Firetube boilers that incorporate watertubes into their design for purposes other than for steam generation, for example, to reduce maintenance, enhance efficiency, reduce emissions, or increase fuel flexibility are considered to be firetube boilers.

\* \* \* \* \*

*Large gaseous fuel subcategory* includes any watertube boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment or gas supply emergencies, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent.

*Large liquid fuel subcategory* includes any watertube boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent. Large gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies are not included in this definition.

*Large solid fuel subcategory* includes any watertube boiler or process heater

that burns any amount of solid fuel either alone or in combination with liquid or gaseous fuels, has a rated capacity of greater than 10 MMBtu per hour heat input, and does not have a federally enforceable annual average capacity factor of equal to or less than 10 percent.

\* \* \* \* \*

*Small gaseous fuel subcategory* includes any firetube boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment or gas supply emergencies, and any other boiler or process heater that burns gaseous fuels not combined with any solid fuels, burns liquid fuel only during periods of gas curtailment or gas supply emergencies, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input.

*Small liquid fuel subcategory* includes any firetube boiler that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, and any other boiler or process heater that does not burn any solid fuel and burns any liquid fuel either alone or in combination with gaseous fuels, and has a rated capacity of less than or equal to 10 MMBtu per hour heat input. Small gaseous fuel boilers and process heaters that burn liquid fuel during periods of gas curtailment or gas supply emergencies are not included in this definition.

\* \* \* \* \*

*Watertube boiler* means a boiler in which water passes through the tubes and hot gases of combustion pass over the outside surface of the tubes. Watertube boilers that incorporate a secondary firetube section to extract additional heat from the combustion gases are considered to be watertube boilers. Boilers that incorporate both firetubes and watertubes into their design, such that primary function of both the firetubes and watertubes is steam generation, are considered watertube boilers for the purpose of this subpart.

\* \* \* \* \*

7. Table 6 to subpart DDDDD is revised to read as follows:

TABLE 6 TO SUBPART DDDDD OF PART 63.—FUEL ANALYSIS REQUIREMENTS

[As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources:]

To conduct a fuel analysis for the following pollutant...	You must...	Using...
1. Mercury .....	a. Collect fuel samples ..... b. Composite fuel samples ..... c. Prepare composited fuel samples ..... d. Determine heat content of the fuel type ..... e. Determine moisture content of the fuel type ..... f. Measure mercury concentration in fuel sample. g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03E01 (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent. Procedure in § 63.7521(d) or equivalent. SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent. ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent. ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (1998) (IBR, see § 63.14(b)) or equivalent. ASTM D6722–01 (for coal) (IBR, see § 63.14(b)) or SW–846–7471A (for solid samples) or SW–846–7470A (for liquid samples) or equivalent.
2. Total Selected metals .....	a. Collect fuel samples ..... b. Composite fuel samples ..... c. Prepare composited fuel samples ..... d. Determine heat content of the fuel type ..... e. Determine moisture content of the fuel type ..... f. Measure total selected metals concentration in fuel sample. g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03E01 (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent. Procedure in § 63.7521(d) or equivalent. SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent. ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (for biomass) (IBR, see § 63.14(b)) or equivalent. ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871 (IBR, see § 63.14(b)) or equivalent. SW–846–6010B or ASTM D6357–04 (for arsenic, beryllium, cadmium, chromium, lead, manganese, and nickel in coal) and ASTM D4606–03 (for selenium in coal) (IBR, see § 63.14(b)) or ASTM E885–88 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.
3. Hydrogen chloride .....	a. Collect fuel samples ..... b. Composite fuel samples ..... c. Prepare composited fuel samples ..... d. Determine heat content of the fuel type ..... e. Determine moisture content of the fuel type .....	Procedure in § 63.7521(c) or ASTM D2234–D2234M–03E01 (for coal) (IBR, see § 63.14(b)) or ASTM D6323–98 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent. Procedure in § 63.7521(d) or equivalent. SW–846–3050B (for solid samples) or SW–846–3020A (for liquid samples) or ASTM D2013–04 (for coal) (IBR, see § 63.14(b)) or ASTM D5198–92 (2003) (for biomass) (IBR, see § 63.14(b)) or equivalent. ASTM D5865–04 (for coal) (IBR, see § 63.14(b)) or ASTM E711–87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent. ASTM D3173–03 (IBR, see § 63.14(b)) or ASTM E871–82 (1998) (IBR, see § 63.14(b)) or equivalent.

TABLE 6 TO SUBPART DDDDD OF PART 63.—FUEL ANALYSIS REQUIREMENTS—Continued

[As stated in § 63.7521, you must comply with the following requirements for fuel analysis testing for existing, new or reconstructed affected sources:]

To conduct a fuel analysis for the following pollutant...	You must...	Using...
	f. Measure chlorine concentration in fuel sample. g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	SW-846-9250 or ASTM D6721-01 (for coal) or ASTM E776-87 (1996) (for biomass) (IBR, see § 63.14(b)) or equivalent.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 122 and 412**

[OW-2005-0036; FRL-OW-2005-0000; FRL-7990-5]

**Notice of Availability of Correspondence Regarding Revisions to the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability.

**SUMMARY:** This notice announces the availability of correspondence and the Environmental Protection Agency's (EPA's) response to inquiries regarding the Concentrated Animal Feeding Operations (CAFOs) regulations. EPA received inquiries on the permit application date in the CAFOs regulation and whether, in response to the February 28, 2005, decision by the Second Circuit Court of Appeals issued in *Waterkeeper v. EPA*, 399 F.3d 486 (2nd Cir. 2005), the permit application date may be extended. The 2003 CAFO rule (68 FR 7176) ("National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations"), hereafter known as the "2003 CAFO rule," contains the requirement that by February 13, 2006, all newly defined CAFOs must apply for a National Pollutant Discharge Elimination System (NPDES) permit. The 2003 CAFO rule also requires that all CAFOs develop and implement a Nutrient Management Plan by December 31, 2006.

EPA is in the process of developing options for revising the 2003 CAFO rule to comply with the Second Circuit Court of Appeals' decision. The schedule for final action provides for a full and

ample opportunity for public notice and comment, but it is not consistent with completion by February 13, 2006. As a result, EPA will propose to extend the permit application date of February 13, 2006, and the Nutrient Management Plan due date of December 31, 2006, in a separate NPRM. This second action will be proposed and finalized by February 13, 2006. The correspondence and the EPA's response have been added to the rulemaking docket and are available to the public.

**ADDRESSES:** Copies of the correspondence may be obtained from EPA's Office of Water docket identified by Docket ID No. OW-2005-0036, by one of the following methods:

(1) Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket.

(2) E-mail: [ow-docket@epa.gov](mailto:ow-docket@epa.gov), Attention Docket ID No. OW-2005-0036.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Interested Entities*

Categories and entities interested in today's notice include:

Category	Examples of interested entities
State/Local/ Tribal Gov- ernment Industry .....	Operators of animal production operations that meet the definition of a CAFO. Beef cattle feedlots (including veal). Beef cattle ranching and farming. Hogs. Sheep. General livestock except dairy and poultry. Dairy farms. Broilers, fryers, and roaster chickens. Chicken eggs. Turkey and turkey eggs. Poultry hatcheries. Poultry and eggs. Ducks.

Category	Examples of interested entities
	Horses and other equines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may be interested in this notice.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for the Revisions to the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations under Docket ID No. OW-2005-0036. The official public docket consists of the correspondence received on the CAFO 2003 rule and the February 28, 2005, decision by the Second Circuit Court of Appeals issued in *Waterkeeper v. EPA*, and EPA's response to this correspondence. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Water Docket is (202) 566-2426. To view these documents materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of \$25.00.