



# Federal Register

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**Thursday,  
February 14, 2002**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Parts 63, 266, and 270  
NESHAP: Standards for Hazardous Air  
Pollutants for Hazardous Waste  
Combustors; Final Rule**

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 63, 266, and 270**

[FRL-7143-4]

RIN 2050-AE79

**NESHAP: Standards for Hazardous Air  
Pollutants for Hazardous Waste  
Combustors (Final Amendments Rule)**
**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA established standards for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors) pursuant to section 112(d) of the Clean Air Act (CAA). This rule included not only the standards themselves, but a battery of provisions setting out the means by which the standards would be implemented. Following promulgation of this final rule, the regulated community, through informal comments, raised numerous issues on specific requirements of the rule relating to provisions implementing the emission standards. In response to these concerns, we proposed and requested comment on changes to discrete provisions in the final rule on July 3, 2001. Today's action finalizes some of the amendments proposed in that notice. These amendments do not change the numerical emission standards, but rather focus on improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. A related final rule establishing interim emission standards was published in the **Federal Register** on February 13, 2002.

**EFFECTIVE DATE:** This rule is effective on February 14, 2002. The incorporation by reference of a publication listed in this rule is approved by the Director of the Federal Register as of February 14, 2002.

**ADDRESSES:** You may view the docket to this rulemaking in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket number is F-2002-RC6F-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page.

**FOR FURTHER INFORMATION CONTACT:** For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Frank Behan at 703-308-8476, [behan.frank@epa.gov](mailto:behan.frank@epa.gov), or Michael Galbraith at 703-605-0567, [galbraith.michael@epa.gov](mailto:galbraith.michael@epa.gov), or write to them at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**
*Acronyms Used in the Rule*

APCD—Air pollution control device  
 ASME—American Society of Mechanical Engineers  
 CAA—Clean Air Act  
 CEMS—Continuous emissions monitors/monitoring system  
 COMS—Continuous opacity monitoring system  
 CFR—Code of Federal Regulations  
 DOC—Documentation of Compliance  
 DRE—Destruction and removal efficiency  
 dscf—Dry standard cubic feet  
 dscm—Dry standard cubic meter  
 EPA/USEPA—United States Environmental Protection Agency  
 gr—Grains  
 HAP—Hazardous air pollutant  
 HWC—Hazardous waste combustor  
 MACT—Maximum Achievable Control Technology  
 NESHAP—National Emission Standards for HAPs  
 ng—Nanograms  
 NIC—Notice of Intent to Comply  
 NOC—Notification of compliance  
 OPL—Operating parameter limit  
 PM—Particulate matter  
 POHC—Principal organic hazardous constituent  
 ppmv—Parts per million by volume  
 psig—Pounds per square inch gage  
 RCRA—Resource Conservation and Recovery Act  
 TEQ—Toxicity equivalence

*Official Record.* The official record is the paper record maintained at the address in **ADDRESSES** above.

*Supporting Materials Availability on the Internet.* Supporting materials are available on the Internet. To access the information electronically from the World Wide Web (WWW), type website <http://www.epa.gov/epaoswer/hazwaste/combust>.

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**Part One—What Events Led up to This Rule?**

**I. What Is the Background of This Rule?**

*A. What Is the Phase I Rule?*

Today's notice finalizes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). In the Phase I final rule, we adopted National Emission Standards for Hazardous Air Pollutants to control emissions of hazardous air pollutants (HAPs) from burning hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns pursuant to section 112(d) of the Clean Air Act (CAA), which provisions require that the emission standards reflect the performance of best available control

technology. *Cement Kiln Recycling Coalition v. EPA*, 255 F. 3d 855, 857 (D.C. Cir. 2001). This level of control is usually referred to as MACT, maximum available control technology. *Id.* at 859. These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's rule, we refer to these three categories collectively as hazardous waste combustors (HWC). More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at [www.epa.gov/hwcmact](http://www.epa.gov/hwcmact).

*B. How Did the Court's Opinion To Vacate the Rule and Petitioners Joint Motion To Stay the Mandate Affect Phase I and Today's Rule?*

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the emission standards and certain related provisions. Petitions for review have also been filed challenging certain of the implementation provisions of the rule, but these petitions have been severed from the litigation dealing with the emission standards, and all litigation on these challenges has been stayed by consent of the parties.

As described in the "interim standards" final rule in yesterday's **Federal Register**, the D.C. Circuit, in the case challenging emission standards, found that EPA had failed to explain adequately how its methodology for calculating so-called MACT floors satisfied the requirements of section 112(d)(3). *Cement Kiln Recycling Coalition*, 255 F. 3d 855 (D.C. Cir. 2001).

On October 19, 2001, we, together with all other petitioners that challenged the hazardous waste combustor emission standards, filed a joint motion asking the Court to stay the issuance of its mandate for four months to allow us time to develop interim standards. Although neither the opinion, nor the litigation, deals with the implementation provisions at issue in this rulemaking,<sup>1</sup> these issues became a part of post-July 24 discussions between EPA and the petitioners. As part of the joint agreement and joint

<sup>1</sup> As noted above, virtually all issues involving implementation provisions were severed and assigned separate case numbers, and so were not before the panel which decided *Cement Kiln Recycling Coalition*.

motion to the court which resulted from those discussions, we agreed to promulgate by February 14, 2002 several of the compliance and implementation amendments to the rule which we proposed on July 3, 2001 (66 FR 35126). Further information on this process is found in the "interim standards" final rule in yesterday's **Federal Register**, and the joint motion can be viewed and/or downloaded from EPA's Hazardous Waste Combustion website <http://www.epa.gov/epaoswer/hazwaste/combust/preamble.htm>.

**II. Which Proposed Amendments Are Included in This Rule?**

After promulgation of the Phase I rule, commenters (primarily the regulated community) raised numerous potential issues through informal comments, during EPA-conducted implementation workshops (which are open to the general public), and during litigation settlement discussions. After considering the issues raised, we proposed 33 amendments to the Phase I rule on July 3, 2001 (66 FR 35126, 35087, and 35124). Nine of these proposed amendments were promulgated in a Direct Final rule,<sup>2</sup> and 14 are being finalized today. Ten amendments will be considered as we proceed with a rulemaking on the final replacement standards scheduled to be promulgated by June 14, 2005.

In a separate notice published in the **Federal Register** on July 3, 2001, we took direct final action on certain amendments to the Sept. 1999 Phase I rule (66 FR 35087). We published the direct final rule without prior proposal because we viewed those amendments as being noncontroversial. We stated that we would withdraw any amendments from the direct final rulemaking that received adverse comments and instead, would seek comment on those amendments through the "parallel" proposal that was published on July 3, 2001 (66 FR 35124).

The following tables include information on all the amendments from the July 3, 2001 proposals.

<sup>2</sup> Thirteen amendments were promulgated on July 3, 2001 in a direct final rule contingent upon the Agency not receiving adverse comment on the amendments. See 66 FR 35087. The Agency received adverse comment on four amendments, and issued a partial withdrawal of the direct final rule on October 15, 2001 (66 FR 52361) that withdrew promulgation of those four amendments.

COMBUSTION MACT AMENDMENTS: DIRECT FINAL RULE

No.	Title of amendment	Approach to address amendment
I .....	Hazardous Waste Residence Time .....	No adverse comments received. The amendment became effective on Oct. 16, 2001.
II .....	Deletion of One-time Notification of Compliance with Alternative Clean Air Act Standards.	No adverse comments received. The amendment became effective on Oct. 16, 2001.
III .....	Use of DRE Data in Lieu of Testing .....	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
IV .....	Time Extension for Waiving PM and Opacity Standards to Correlate PM CEMs.	No adverse comments received. The amendment became effective on Oct. 16, 2001.
V .....	Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln.	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
VI .....	Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals.	No adverse comments received. The amendment became effective on Oct. 16, 2001.
VII .....	Deletion of Baghouse Inspection Requirements .....	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
VIII .....	Feedstream Analysis for Organic HAPs .....	Adverse comments were received, thus the amendment was proposed in the "parallel" proposal, and is being promulgated in this rule.
IX .....	Revisions to the Metals Feedrate Extrapolation Procedures .....	No adverse comments received. The amendment became effective on Oct. 16, 2001.
X .....	Feedrate Limits for Undetectable Constituents .....	No adverse comments received. The amendment became effective on Oct. 16, 2001.
XI .....	Revisions to Assist Early Compliance .....	No adverse comments received. The amendment became effective on Oct. 16, 2001.
XII .....	Accuracy Requirements for Weight Measurement Devices .....	No adverse comments received. The amendment became effective on Oct. 16, 2001.
XIII .....	Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operator Parameter Limit for Mercury Control for Wet Scrubbers.	No adverse comments received. The amendment became effective on Oct. 16, 2001.

COMBUSTION MACT AMENDMENTS

Proposed Rule

No.	Title of amendment	Approach to address amendment
I .....	Definition of Research, Development, and Demonstration Sources.	The amendment will be addressed in a future MACT rule.
II .....	Identification of an Organics Residence Time That Independent From and Shorter Than the Hazardous Waste Residence Time.	The amendment is will be addressed in a future MACT rule.
III .....	Controls on APCDs After the Hazardous Waste Residence Time Has Expired.	The amendment will be addressed in a future MACT rule.
IV .....	Instantaneous Monitoring of Combustion Zone Pressure .....	The amendment is promulgated in today's rule.
V .....	Operator Training and Certification .....	The amendment is promulgated in today's rule.
VI .....	Bag Leak Detection System .....	The amendment is promulgated in today's rule.
VII .....	Time Extensions for Performance Testing If the Test Plan Has Not Been Approved.	The amendment is promulgated in today's rule.
VIII .....	Flexibility in Operations During Confirmatory Performance Testing for Dioxin/Furans.	The amendment is promulgated in today's rule.
IX .....	Waiving Operating Parameter Limits During Performance Testing.	The amendment is promulgated in today's rule.
X .....	Method 23 as an Alternative to Method 0023A for Dioxin/Furans.	The amendment will be addressed in a future MACT rule.
XI .....	Calibration Requirements for Thermocouples .....	The amendment is promulgated in today's rule.
XII .....	Alternative Approach to Establish Operating Parameter Limits	The amendment will be addressed in a future MACT rule.
XIII .....	Extrapolation of Operating Parameter Limits .....	The amendment will be addressed in a future MACT rule.
XIV .....	Limit on Minimum Combustion Chamber Temperature for Cement Kilns.	The amendment will be addressed in a future MACT rule.
XV .....	Revisions to Operating Requirements for Activated Carbon Injection and Carbon Bed Systems.	The amendment is promulgated in today's rule.
XVI .....	Clarification of Requirements to Confirm Carbon Bed Age .....	Amendment is promulgated in today's rule.
XVII .....	Revisions to Operating Parameter Limits for Wet Scrubbers .....	The amendment will be addressed in a future MACT rule.
XVIII .....	Reproposal of kVA Limits for Electrostatic Precipitators and Request for Comment on Approaches to Ensure Baghouse Performance.	The amendment will be addressed in a future MACT rule.
XIX .....	How to Comply Temporarily with Alternative, Otherwise Applicable MACT Standards.	Amendment is promulgated in today's rule.

COMBUSTION MACT AMENDMENTS—Continued

Proposed Rule

No.	Title of amendment	Approach to address amendment
XX .....	RCRA Permitting Requirements for Sources Entering the RCRA Process Post-Rule Promulgation.	The amendment will be addressed in a future MACT rule.

**Part Two—What Revisions, Proposed in the Parallel Proposal, Are We Making Today?**

**I. What Previous DRE Test Results May You Use To Demonstrate Compliance With the MACT DRE Standard**

*A. Why Are We Deleting the Age Restriction for Using Data in Lieu of Performing a DRE Test?*

Today we are revising the September 1999 final rule to allow sources that inject hazardous waste only in the flame zone to use any previous destruction and removal efficiency (DRE) test results to document compliance with the DRE standard, provided the data meet our quality assurance/quality control requirements. These revisions do not affect sources that inject hazardous waste in places other than the normal flame zone.

Prior to today's change, we allowed data that were no older than five years to be used to document compliance with the DRE standard. However, stakeholders observed that sources that inject hazardous waste only in the flame zone need only document compliance with the DRE requirement once for the life of the source under September 1999 final rule, provided the test continues to be representative of current design and operating conditions. Stakeholders reasoned that, given that a single test is acceptable to document compliance with the DRE standard for the life of the source, the rule should allow use of DRE data older than five years to document compliance with the standard. We agree with stakeholders' concerns. Accordingly, in the parallel proposal to the direct final rule, we proposed to allow any DRE results (that meet QA/QC requirements and that continue to represent the design and operation of the source), irrespective of how old the tests are, to be used in lieu of having the source perform a new DRE test. All comments we received on this issue were favorable.

This change does not apply to sources that inject hazardous waste outside of the flame zone because the September 1999 final rule requires that these sources document compliance with the DRE standard every five years. These sources may use DRE test results that are no older than five years old to

document compliance with the initial DRE test, and are required to perform a new test every five years. Although we explained in the preamble to the July 3, 2001 proposal that the revision discussed above applies only to sources that feed hazardous waste in the flame zone, one commenter notes that the proposed rule did not make a distinction between sources that feed waste in the flame zone versus other sources. We agree with this commenter and have corrected this oversight in today's amendment.

*B. Why Are We Expanding the Type of Allowable DRE Test Results To Include Any Results That Pass QA/QC?*

The September 1999 final rule restricts the DRE test data that can be used in lieu of performing a new test to data obtained in support of a previous RCRA permit issuance or reissuance. We did this because we wanted to ensure that the DRE data used met the quality assurance/quality control requirements applicable to data used to demonstrate compliance with the standards under the RCRA permit process. Stakeholders, however, expressed concerns that data meeting EPA's quality requirements can be generated outside the RCRA permit process. For example, a source might perform some type of CAA performance testing. This testing potentially could have the same level of oversight, and the same quality, as data obtained during the RCRA permit process.

We agree with stakeholders' concerns. In the parallel proposal to the direct final rule, we proposed to allow other DRE data provided that the data were obtained with the same level of oversight and quality as those data obtained during the RCRA permitting process. All commenters agree with this proposal and we are promulgating this amendment as proposed.

**II. What Are the Hydrocarbon Monitoring Requirements for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the "Hot" End of the Kiln?**

We are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a "preheater tower

combustion gas monitoring location" as an alternative to hydrocarbon monitoring in the main stack. These revisions are identical to those proposed (in the parallel proposal to the direct final rule (66 FR 35124 and 35092)). Accordingly, we are revising the requirements of § 63.1206(b)(13)(i) and adding the definition for a "preheater tower combustion gas monitoring location" to § 63.1201(a) as proposed.

Prior to today's action, § 63.1206(b)(13)(i) required new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the "hot" end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. As explained in the final rule promulgated on September 30, 1999, we concluded that it would not be appropriate for cement kilns to comply with a hydrocarbon standard in the by-pass duct if hazardous waste is fed at a location downstream (relative to the direction of flue gas flow) of the by-pass sampling location. We stated that such operation would result in combustion of hazardous waste that would not be monitored by a hydrocarbon monitor (64 FR 52971).

Today's rule establishes an alternative to the main stack hydrocarbon standard of 20 ppmv for short, dry process cement kilns. Specifically, we are finalizing an alternative hydrocarbon standard of 10 ppmv measured continuously both in the alkali by-pass duct and at a preheater tower combustion gas monitoring location. This alternative monitoring approach satisfies our concern that the combustion of hazardous waste is monitored continuously by a hydrocarbon monitor.

One commenter opposed the proposed revisions to the hydrocarbon monitoring requirements and stated that the provision inappropriately establishes a separate category for short, dry process cement kilns and weakens the hydrocarbon standard by allowing for an increase in emissions. Three other

commenters supported the proposed changes to allow short, dry process cement kilns to continuously monitor hydrocarbons in the alkali by-pass duct and at the preheater tower combustion gas monitoring location.

We disagree with the commenter that this hydrocarbon monitoring alternative establishes a separate subcategory for short, dry process cement kilns. The final rule promulgated on September 30, 1999 (64 FR at 52885–52888) established different hydrocarbon and carbon monoxide standards for cement kilns with and without by-pass sampling systems. See §§ 63.1204(a)(5)(i) and (ii). All the existing short, dry process cement kilns burning hazardous waste are equipped with a by-pass duct and are subject to the hydrocarbon and carbon monoxide standards of § 63.1204(a)(5)(i). Today's final rule thus does not create a new subcategory for short, dry process cement kilns.

We also disagree with the commenter that the alternative hydrocarbon monitoring requirements weaken the hydrocarbon standard resulting in increased hydrocarbon emissions. We note that the hydrocarbon emission standard for the hydrocarbon monitoring alternative (10 ppmv) is more stringent than the hydrocarbon standard in the main stack (20 ppmv). All hydrocarbon emissions from the combustion of hazardous wastes would be reflected in the hydrocarbon measurements in the by-pass duct and at the preheater tower monitoring location and would decrease with improved combustion efficiency. As a result, this reflects MACT control or better because the hydrocarbon standard under the alternative is more stringent. As a result, one likely outcome of the alternative is that sources may burn hazardous waste under more efficient conditions.

We recognize, however, that a source electing the hydrocarbon monitoring alternative could substitute for its normal raw materials with other raw materials containing higher trace levels of organics. This monitoring alternative wouldn't detect higher concentrations of hydrocarbons emitted from the main stack (associated with the new raw materials) even though hydrocarbon concentrations originating from the combustion of hazardous waste remains the same. This substitution scenario is unlikely to occur for cement kilns because these facilities are sited near the primary raw material source to avoid transportation costs. Transporting large quantities of an alternative sources of raw material(s) is likely to be prohibitively costly. Moreover, we

anticipate that any potential concerns associated with such raw material substitutions can be addressed in a site-specific risk assessment conducted as part of the RCRA permitting process. See *Horsehead Resource Development Co. v. Browner*, 16 F.3d 1246, 1262–63 (D.C. Cir. 1994) (EPA may permissibly regulate combined emissions from burning both hazardous wastes and non-wastes from boilers and industrial furnaces pursuant to its RCRA authority).

Accordingly, we are revising the requirements of § 63.1206(b)(13)(i) and adding the definition for a “preheater tower combustion gas monitoring location” to § 63.1201(a).

### III. Why Are We Deleting the Baghouse Inspection Requirements?

As proposed (66 FR 35124 and 35096), we are deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10) applicable to incinerators and lightweight aggregate kilns. We find that the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector are adequate to ensure proper operation and maintenance of the baghouse. We believe that generic, prescriptive requirements (e.g., monthly inspection of bags, bag connections and the interior of the baghouse for physical integrity) may impose burdensome cost without commensurate benefits because such requirements may be inappropriate for the particular source. In lieu of complying with generic requirements, each source is required to develop monitoring and inspection procedures and to include those procedures in the general operation and maintenance plan.

We are also deleting the requirements of § 63.1206(c)(7)(ii)(A) and § 63.1207(f)(1)(xv) requiring submittal of the baghouse operations and maintenance plans to the Administrator. We had already determined that the general operation and maintenance plan required under § 63.1206(c)(7)(i) need not be submitted to the Administrator for review and approval. Therefore, we find no need to now single out the baghouse operation and maintenance plan for review and approval, since sources must continuously operate a bag leak detector system that identifies baghouse malfunctions.

Most comments favored the revision. One commenter, however, favors retaining the inspection provisions, and states that inspections trigger preventive maintenance, prevent malfunctions, and identify sources of fugitive emissions. We believe that site-specific baghouse inspection and monitoring provisions

included in the operation and maintenance plan, coupled with a bag leak detector system, will ensure proper operation and maintenance of the baghouse because a bag leak detection system is a state-of-the-art monitoring system that ensures that the baghouse continues to operate in a manner consistent with good air pollution control practices. See also 64 FR 52908, September 30, 1999. The operation and maintenance plan must be included in the operating record and is subject to review by the inspectors to determine whether it is adequate to ensure the baghouse is operated and maintained in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards. §§ 63.1206(c)(7) and 63.6(e). We do not regard further requirements as necessary to assure proper baghouse operation and maintenance.

### IV. What Are the Requirements for Feedstream Analysis of Organic HAPs?

In the parallel proposal to the direct final rule (66 FR 35124 and 35096), we intended to clarify the requirements for feedstream analysis of organic HAPs for compliance with the DRE standard. Section 63.1207(f) requires you to obtain “an analysis of each feedstream, including hazardous waste, other fuels, and industrial feedstocks, as fired, that includes: \* \* \* an identification of such organic hazardous air pollutants that are present in the feedstream, except that you need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream.” Following promulgation of the rule, stakeholders expressed concern about whether we had sought to require an analysis of all waste feedstreams or only the hazardous waste feedstreams. Stakeholders also brought to our attention that there were certain implications of requiring an analysis of CAA HAPs rather than RCRA Appendix VIII organic compounds, and stated that the requirement for continued analysis of organic HAPs every five years for the comprehensive performance test is overly burdensome if a source qualifies to comply with the DRE standard with a one-time emissions test.

We addressed stakeholders' concerns in the proposed rule as follows. First, we addressed the implications of selecting POHCs from the list of organic CAA HAPs rather than from the list of RCRA organic compounds for demonstrating compliance with the DRE standard. One stakeholder questioned whether RCRA DRE test data can be used in lieu of MACT DRE testing if the

POHCs selected during the RCRA test are not organic HAPs under the CAA. Another question was how to ensure DRE of those organic HAPs for which thermal stability data are not available. In response, we stated that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their hazardous waste feedstream. For instance, the most difficult to destroy POHCs used for RCRA DRE testing would also be representative of the most difficult to destroy CAA organic HAPs. See 66 FR 35097.

Second, we responded to questions on the frequency for analyzing organic HAP compounds in hazardous waste feedstreams. Stakeholders had questioned why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years once a source has demonstrated compliance with the DRE standard with a one-time test under the conditions of § 63.1206(b)(7)(i). In the proposal, we agreed with stakeholders that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A) is not necessary in all cases. As a result, we proposed to add § 63.1207(f)(1)(ii)(D) to allow regulatory officials to waive the comprehensive analysis of organic compounds, provided that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs being fed to the combustor. See 66 FR 35097.

Third, we clarified that we intended to require analysis of organic HAPs in the hazardous waste feedstreams only. Section 63.1207(f)(1)(ii)(A) could be read to imply that sources must analyze all feedstreams for organic HAPs. We proposed to amend this section to reflect our true intent not to require analysis for all feedstreams. See 66 FR 35097.

The majority of commenters on the proposal agree with the clarifications. However, one commenter asserts that POHCs should be selected considering organic HAPs in all feedstreams, not just hazardous waste feedstreams. The commenter reasons that approval of a comprehensive performance test plan without knowledge of the organic HAPs in all feedstreams could result in selecting POHCs that do not represent the most difficult to destroy organic compounds in all feedstreams. Thus, the DRE test may not ensure destruction of the most difficult to destroy compounds fed to the combustor. The commenter

also suggests that the analysis for HAPs in all waste streams should be required because one or more of the POHCs selected based on hazardous waste feedstream analysis may also be present in nonhazardous waste streams. If the feedrate of POHCs in nonhazardous waste feedstreams are not accounted for during DRE testing, the DRE calculation will be conservatively low because more POHCs will be fed than accounted for in the calculation. In summary, the commenter's first concern addresses the analysis of feedstreams for HAPs for POHC selection prior to conducting the performance test, while the second concern addresses the analysis of feedstreams for HAPs that are chosen as POHCs for purposes of calculating DRE during the performance test.

With respect to commenter's first concern, we disagree with the need to consider organic HAPs in all feedstreams for POHC selection. We adopted the DRE requirement from existing RCRA requirements where it applies only to hazardous waste feeds,<sup>3</sup> and did so to satisfy section 3004 (o)(1)(B) of RCRA, which requires EPA to retain a DRE requirement for *hazardous waste*. Also, repromulgation of the RCRA requirement as a CAA standard saves the administrative burden of separate RCRA DRE permitting. See 64 FR at 52847. In addition, even if all feedstreams were considered for POHC selection, we conclude that organic HAPs in fossil fuels and raw materials would not be selected as the POHCs of greatest concern considering the types and concentration of those organic HAPs relative to the types and concentration of organic HAPs in hazardous waste feedstreams. Finally, we note that owners and operators typically select the same POHCs to demonstrate DRE regardless of the hazardous waste present. These POHCs are among the most difficult compounds to destroy of any organic compounds. Thus, presence of organic HAPs in nonhazardous waste feedstreams is generally moot because they would not suggest any different POHCs.

With respect to the commenter's second concern, we agree that the DRE calculation will be conservatively low if POHCs are present in nonhazardous waste feedstreams and not accounted for in the calculation. However, we are not aware that this has been a problem for sources trying to show compliance with DRE. Therefore, based upon the

<sup>3</sup> For example, the DRE requirements of § 266.104 for cement kilns and lightweight aggregate kilns apply to hazardous waste feedstreams only, not fossil fuel or raw material feedstreams.

commenter's two concerns, we think the proposed clarifications are appropriate.

### **Part Three—What Revisions, Proposed in the Technical Amendments Proposal, Are We Making in Today's Rule?**

#### **I. What Revisions Are We Making to the Combustion System Leak Provisions?**

We are making several revisions to the combustion system leak provisions. First, we are amending the definition of an instantaneous pressure monitor to better clarify that the intent of the combustion system leak requirements is to prevent fugitive emissions from the combustion of hazardous waste rather than from nonhazardous feedstreams. The revised definition also clarifies that instantaneous pressure monitors must detect and record pressure at a frequency adequate to detect combustion system leak events, as determined on a site-specific basis. See § 63.1201(a) and § 63.1209(p). Second, you must specify the method that you plan to use to control combustion system leaks in the performance test workplan and Notification of Compliance. See § 1206(c)(5)(ii). Finally, in response to numerous comments, today's rule also adopts a provision that will allow you, upon prior written approval of the Administrator, to use other techniques to monitor pressure that can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits. See § 63.1206(c)(5)(i)(D).

#### **A. What Did We Propose To Change?**

The September 1999 final rule requires you to control combustion system leaks by either: (1) Keeping the combustion zone sealed; (2) maintaining the maximum combustion zone pressure lower than the ambient pressure using an instantaneous monitor; or (3) using an alternative means to provide control of system leaks. After publication of the final rule, stakeholders expressed concern that the requirement to maintain the combustion zone pressure lower than ambient pressure (option 2 above) could result in an overly prescriptive requirement. Stakeholders believe this regulatory language can be interpreted to require you to monitor and record combustion zone pressure at a frequency of every 50 milliseconds. Stakeholders also requested that we clarify that combustion system leaks refer to fugitive emissions resulting from the combustion of hazardous waste, and not fugitive emissions that originate from nonhazardous process streams

(e.g., the clinker product at a cement kiln).

In response to the above concerns, we proposed several amendments to the combustion system leak provisions. 66 FR at 35132. First, we proposed to modify the definition of an instantaneous pressure monitor to read as follows: "Instantaneous monitoring for combustion system leak control means detecting and recording pressure without use of an averaging period, at a frequency adequate to detect combustion system leak events from hazardous waste combustion."

Second, we proposed to revise the automatic waste feed cutoff regulatory language to read as follows: "If you comply with the requirements for combustion system leaks under § 63.1206(c)(5) by maintaining the maximum combustion chamber zone pressure lower than ambient pressure to prevent combustion system leaks from hazardous waste combustion, you must perform instantaneous monitoring of pressure and the automatic waste feed cutoff system must be engaged when negative pressure is not adequately maintained."

Third, we proposed that you must specify the method used to control combustion system leaks in the performance test workplan and notification of compliance. If you control combustion system leaks by maintaining the combustion zone pressure lower than ambient pressure using an instantaneous monitor, we also proposed that you must specify the monitoring and recording frequency of the pressure monitor, and specify how the monitoring approach will be integrated into the automatic waste feed cutoff system.

Stakeholders also suggested that we allow averaging of the pressure readings over short periods of time, e.g., a 5-second rolling average updated every second, in demonstrating the combustion system is maintained below ambient pressure. As result, we requested comment on whether such a monitoring approach is appropriate.

#### B. What Were Commenters' Reactions to the Proposed Amendments?

We received no adverse comments on the proposed amendments that: (1) Require you to specify the method that will be used to control combustion system leaks in the performance test workplan and notification of compliance; and (2) revise the automatic waste feed cutoff provision that addresses combustion system leak events. We are finalizing these proposed amendments in today's rulemaking.

The majority of commenters supported the proposed amendment to the definition of instantaneous monitoring. Many of those supporting this amendment, however, were opposed to the concept of requiring instantaneous pressure limits altogether (see discussion below). One commenter expressed concern that the definition of instantaneous monitoring can still be interpreted to require you to monitor pressure as often as once every 50 milliseconds. Although the proposed definition of instantaneous monitoring clarifies that monitoring frequency should be adequate to detect combustion system leaks, the language does not specify what is considered to be an appropriate frequency. We conclude that such specificity in regulations would not be appropriate because sources differ substantially in design and operation such that different monitoring frequencies may be needed to prevent fugitive emissions. As a result, we are adopting, unchanged, the proposed revision to the definition of instantaneous monitoring.

Rather than specify a minimum monitoring frequency in the regulations, we clarify here that we do not intend for the instantaneous monitoring requirements to require a pressure monitoring frequency as often as once as every 50 milliseconds. We believe a reasonable pressure monitoring frequency that could meet the intent of the instantaneous monitoring definition is once every second, and a reasonable pressure recording frequency could be once every minute, provided that: (1) the automatic waste feed cutoff is engaged when a one-second reading exceeds ambient pressure; (2) you record in the operating record when any such event occurs; and (3) the pressure reading that is recorded every minute represents the highest one-second observation during the previous minute.

#### C. What Were Commenters' Objections to Instantaneous Pressure Limits?

Commenters disagree with the premise that a positive pressure event equates to a release of fugitive emissions, citing examples of positive pressure events that, based on system design and operation, do not result in fugitive emissions. They claim the rule as currently written will discourage innovative engineering solutions that would minimize fugitive emissions (e.g., installation of new kiln seals) because of the presumption that any positive pressure excursion results in an automatic waste feed cutoff.

We acknowledge that positive pressure events do not necessarily result in fugitive emissions. For example,

there are state-of-the-art rotary kiln seal designs (such as shrouded and pressurized seals) which are capable of handling positive pressures without fugitive releases. Specifically, we are aware of rotary kilns operated at the U.S. Department of Energy (USDOE) Savannah River Site and USDOE Oak Ridge Site that have been used for radioactive and hazardous waste treatment which are designed to prevent the release of radioactive materials. The Savannah River kiln uses multiple graphite seals with pressurized chambers between the seals to prevent out-leakage at kiln pressures up to the pressure in the seal chamber (10 psig). The Oak Ridge kiln uses overlapping spring plate seals to form an air seal, and is designed to withstand positive pressures up to 2 psig. See Support Document for Fugitive Emission Control, February, 2002 for more information.

However, we believe these kilns are highly unusual, and that other conventional rotary kilns used in the hazardous waste combustion industry may not have seals which are designed for such positive pressure operation. In fact, we believe that, for most rotary kilns in current service, positive pressure events can result in fugitive releases. The level of such fugitive releases will be dependent on factors including the magnitude of the pressure excursion and the design and operation of the kiln.

Nonetheless, we agree that explicit restrictions on positive pressure events could discourage you from implementing innovative methods to prevent fugitive emissions, and we agree that instantaneous negative pressure limits may be not warranted for all hazardous waste combustion sources. A solution that was recommended by several commenters would amend the pressure monitoring requirements by including a provision that will, upon prior written approval of the Administrator, allow you to use other techniques to monitor pressure which can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits. Such a provision would clarify that you can use a compliance approach that does not require pressure to be maintained below ambient on an instantaneous basis provided you demonstrate that the method prevents fugitive emissions. We agree that this recommended amendment is reasonable and appropriate. Today's rule adopts this revision to the combustion system leak provisions.

Many commenters believe instantaneous pressure monitoring



requirements will increase the number of automatic waste feed cutoffs, resulting in rapid switching between use of supplementary fuel and hazardous waste fuel. The instantaneous pressure monitoring requirements could thus have a negative impact, resulting in increased use of fossil fuel and, because of the non-steady-state nature of combustion conditions associated with the rapid switching of fuels, increased pollutant emissions. Commenters claim the use of short averaging periods, time delays, or damping of the transmitter response times would allow properly designed facilities to handle these types of pressure changes while still minimizing fugitive emissions.

We believe automatic waste feed cutoffs are appropriate non-compliance deterrents, and are necessary whenever you exceed an emission standard or operating requirement (e.g., when fugitive emissions occur). If you repeatedly exceed the emission standards you should modify your operating practices and/or design of the unit to minimize the number of exceedances. However, we agree that needless triggering of automatic waste feed cutoffs when you are not exceeding an emission standard may provide less environmental protection, not more. As previously discussed, there may be instances when positive pressure events do not result in combustion system leaks. We believe the provision we are adopting that will allow you to use other techniques to monitor pressure that can be demonstrated to prevent fugitive emissions adequately addresses these commenters' concerns.

Several commenters suggest we abandon the instantaneous pressure monitoring requirement altogether and use the existing RCRA fugitive emission regulatory language in § 264.345.<sup>4</sup> One commenter agrees that there are some units where instantaneous negative pressure limits are desirable to minimize fugitive emissions. Other commenters claim we should abandon the instantaneous monitoring requirements because we require different levels of protection across different regulations. Specifically, the instantaneous pressure monitoring requirements in the Hazardous Waste Combustor MACT rule appear to reflect a zero tolerance for combustion system leaks while the requirements of the RCRA Subpart BB regulations covering air emissions for equipment leaks are less restrictive for the same types of wastes. One commenter states that the

instantaneous pressure monitoring requirements should be abandoned because we have not demonstrated combustion system leaks present health risks.

We believe that combustion system leaks must be prevented whenever it is reasonably possible. This is the approach currently required by existing RCRA hazardous waste incinerator and boiler and industrial furnace rules. See §§ 264.345(d)(2) and 266.103(h)(2). Instantaneous pressure monitoring without the use of averaging periods is an appropriate, demonstrated compliance strategy option that achieves this goal. As a result, we cannot agree to drop the instantaneous monitoring requirements for all facilities. However, as previously stated, instantaneous pressure monitoring requirements may not be warranted for all hazardous waste combustion sources to prevent combustion system leaks and we are including a provision that allows you to use other techniques to monitor pressure which can be demonstrated to prevent fugitive emissions.

We acknowledge the differences between the RCRA Subpart BB and MACT combustion system leak requirements. The MACT provisions are designed to assure compliance with the hazardous waste combustor emission standards and to assure that you operate in a manner consistent with good air pollution control practices. CAA Section 112(d) MACT emission standards and good air pollution control practices are generally technology specific and dependent on the type of regulated unit—they are not risk-based standards. Fugitive emissions from open tanks, pumps and valves will not be regulated the same as fugitive emissions from hazardous waste combustors because they are different devices that practically must use different pollution abatement systems.<sup>5</sup> Therefore, we do not agree with the commenters' assertions that there is an inappropriate disparity between the Subpart BB and MACT requirements.

One commenter believes that a five second pressure averaging or delay period is adequate for most sources, but for systems with high performance or double seals, a longer time could be warranted and for systems with less effective seals, a shorter period could be

appropriate. Another commenter believes that we should allow you to average the positive pressure events over a time period not to exceed 15 seconds. A third comment recommends that the averaging period be no longer than a half of a second.

We disagree that a pressure averaging time not to exceed either five or fifteen seconds would be appropriate for all sources. The pressure monitoring technique that adequately prevents combustion system leaks is site-specific and will be dependent on many factors, including combustion chamber type and design, kiln seal design, hazardous waste feed practices, etc. If you choose to implement a pressure averaging compliance approach, today's adopted amendment requires you, on a site-specific basis, to demonstrate that the averaging period adequately prevents fugitive emissions.

Finally, one commenter states that EPA should not require chemical demilitarization facilities to maintain negative pressures in the combustion chamber at all times due to the energetic nature of the feedstream. The commenter states that although it is not possible to eliminate all transient pressure spikes in chemical demilitarization furnaces, the commenter believes the engineering features of the units and the air containment systems address environmental concerns. Furthermore, the commenter asserts that fugitive emissions that are released from these units into the containment rooms are controlled to better than a 99.9999% destruction removal efficiency, and suggests this meets or exceeds the control level that would be achieved if those same emissions had passed through the air pollution control system.

The chemical demilitarization facilities are unique because: (1) They thermally treat chemical agents; and (2) the combustion units are located in enclosed rooms where the air is exhausted through a bank of carbon filters specifically designed to control fugitive emissions. We are convinced that combustion system leaks should be prevented whenever it is reasonably possible, even considering the fact that the fugitive emissions are controlled by a secondary device. We consider this necessary because of the toxicity of these wastes, and because we believe such an approach is consistent with current good air pollution control practices.<sup>6</sup>

<sup>6</sup> We believe minimizing fugitive emissions whenever reasonably possible to be consistent with good air pollution practices because this best

<sup>4</sup> We note the § 264.345 language does not explicitly require instantaneous pressure monitoring.

<sup>5</sup> For example, fugitive emissions from combustors are generally controlled by maintaining a negative combustion chamber pressure to ensure the organic wastes remain in the unit at the elevated temperatures to achieve organic destruction. Fugitive emissions from tanks and valves are generally controlled with containment systems (tank covers or vapor recovery systems), periodic leak inspections, etc.

Because it appears that these facilities may be designed to adequately control the fugitive emissions that are released from the combustion units, a pressure monitoring scheme that does not include the use of instantaneous limits may be warranted.<sup>7</sup> We note that there are two existing regulatory mechanisms that allow you to implement a fugitive emission control compliance approach other than one that uses instantaneous pressure limits. First, § 63.1206(c)(5)(i)(C) allows you to use an alternative means to provide control of combustion system leaks equivalent to maintenance of combustion zone pressure lower than ambient pressure, upon prior written approval of the Administrator. Also, the alternative monitoring provisions of § 63.1209(g)(1) allow you to petition the regulatory official for approval to use alternative monitoring methods. As previously discussed, we are amending the pressure monitoring requirements to include a provision that will, upon prior written approval of the Administrator, allow the use of other techniques to monitor pressure which can be demonstrated to prevent fugitive emissions without the use of instantaneous pressure limits.

## II. What Revisions Are We Making to the Operator Training and Certification Requirements ?

On July 3, 2001 (*see* 66 FR 35132–34), we proposed changes to the operator training and certification requirements of § 63.1206(c)(6). Today we are finalizing those changes as proposed. These changes revise the rule to: (1) Allow incinerator control room operators to be trained and certified under either a site-specific, source-developed and implemented program; or the American Society of Mechanical Engineers (ASME) program; or a state program; (2) for sources that choose to use the ASME program, require only provisional ASME certification by the compliance date for existing facilities, and by the date of assuming duties for

ensures the organic waste remains in the combustion unit for a duration of time, and at an elevated temperature, necessary to achieve adequate organic destruction.

<sup>7</sup> The information provided by the commenter that describes the control efficiency for released fugitive emissions does not contain the level of detail that would allow us to conclusively evaluate the commenter's assertions. For example, no information was provided explaining whether comparable carbon removal efficiencies would be achieved for such low organic concentration levels that result after the fugitive emissions are diluted by the containment room air (as compared to the destruction and removal efficiency in the combustor). The level of review is more appropriately conducted by the local regulatory official.

new employees; (3) delete the requirement to provide control room operator training and certification for shift supervisors; (4) require control room operators to complete an annual review or refresher course covering prescribed topics to maintain certification; and (5) clarify that a certified control room operator must be on duty at the source at all times the source is in operation.

As explained at proposal, the ASME program comprises of testing in two parts. The ASME administers a comprehensive, generic, written test addressing operations of various types of incinerators and their pollution control systems, and awards provisional certification to operators passing this test. Full certification is awarded later after an operator with provisional certification passes an on-site, site-specific oral examination. The ASME does not implement any training programs for these tests, and also does not require any annual review or refresher course to maintain certification. Under today's rule, each source is required to impart requisite training to its operators to pass the tests administered either by the ASME, or by the source itself; and also to implement an annual review or refresher course, described in detail at proposal.

Most commenters strongly favor all the revisions. One commenter, however, states that deleting certification requirements for shift supervisors is unwise and can lead to increased emissions, and that the certified supervisors can fill in during absences of the operator. We were not persuaded by this comment. Today's revision mandates the presence of a certified operator at all times the source is in operation. Because there will always be some periods of absence of any particular operator (due to vacation time, sickness etc.), the source will prepare plans for such periods and record them in the training and certification program, that is a part of the operating record. Since many sources are operated 24 hours a day, 7 days a week, and there is more than one operator in the control room (with one being the chief or head operator), we believe each source will train and certify several operators, and plan their rotational assignments according to their needs. It is the responsibility of each source to plan whether to utilize the shift supervisor, or a deputy of the chief control room operator during any absences. Of course, if a shift supervisor is used for such occasions, the shift supervisor must be trained and certified as a control room operator.

One commenter states that no state programs for control room operators are available. We agree that state programs may not be available, but believe that some states are either considering developing their own operator programs, or actively review, approve and oversee the facility-developed site-specific training programs. We do not want to foreclose any opportunity either to the sources, or to the states in this matter.

Another commenter states that the preamble to the proposal stipulates a written test, and does not mention use of equivalent techniques such as a computerized test. We agree that a computerized test or other testing approach equivalent to a written test may be appropriate and note that the regulation does not require use of a written test. If you plan to use an alternative to a written test, however, you should describe the testing approach in your training and certification program.

## III. What Time Extensions for Testing Are Available If the Comprehensive Performance Test Plan Has Not Been Approved?

As proposed on July 3, 2001 (66 FR at 35135), we are revising the September 1999 rule to allow you to perform your comprehensive performance test later than you otherwise must if the permitting authority has not approved your test plan. To get a time extension, you must petition the permitting authority for a time period not to exceed six months. This petition may be renewed for a total time extension of one year. Permitting authorities should grant these extensions if the source has acted in good faith. You must, however, perform your test no later than one year after the test date (or sooner if your time extension expires before one year) that would have applied if the test plan had been approved in a timely manner.

In the final rule, we made no provision for having the test date delayed. We stated that sources would have to perform their comprehensive performance test within 6 months of the compliance date regardless of whether the test plan had been approved. At the time we stated that "if permit officials nevertheless fail to act within the nine month review and approval period, a source could argue that this failure is tacit approval of the plan and that later 'second guessing' is not allowed." See 64 FR at 52912. However, stakeholders noted that there is nothing to prohibit a permitting official from disapproving a plan after the actual test had been performed. If this occurs, the source

would be required to rerun a test based on the revised test plan.

Combustion source owners are very concerned about this potential scenario. They point out that comprehensive performance tests are very expensive, often several hundreds of thousands of dollars for a commercial source, and possibly more than a million dollars at a government installation due to the unique circumstances encountered while burning munitions or mixed waste. Therefore, we agree with stakeholders that a comprehensive performance test should not have to be rerun when circumstances prevent the permitting official from approving the test plan in a timely manner.

We proposed an amendment to the final rule that we believe addresses stakeholders' concerns. The proposed amendment specifically allowed sources to petition the Administrator under § 63.7(h) to waive the test requirement for up to six months if the test plan is not approved. This will give the permitting official an additional six months to act on the test plan. The source also could request a second waiver of up to six months if the plan is not approved following the initial six month period. You would qualify for this waiver if you submitted your test and evaluation plans on time, and made a good faith effort to accommodate any comments you received on those plans. The proposed amendment also describes the procedures for obtaining the waiver, what documentation you must include in the waiver, and how to involve the public.

We are promulgating this amendment as proposed. All but two commenters support the amendment. The commenters opposing the amendment are concerned that, despite as much as a 12-month respite from testing, the source might still have to perform a test after those 12 months without an approved test plan. Many commenters that support the proposed amendment also mention this concern. However, while we are sympathetic to the legitimate need for a time extension due to circumstances preventing the permitting authority to approve or deny the test plan, we continue to "believe that an open-ended test date will not provide an incentive for either sources or regulatory officials to resolve differences related to a test plan, thereby unnecessarily delaying testing." See 66 FR at 35135 for our previous discussion on this issue. None of the commenters provide information on this issue beyond what was available at the time the final rule was promulgated. Therefore, our belief at the time of the final rule that the test date should not

be open-ended, has not changed, nor do we have any basis to believe that any extension beyond one year is needed.

#### **IV. What Flexibility Is Provided in Operations During Confirmatory Testing for Dioxin/Furans?**

On July 3, 2001 (see 66 FR at 35136), we proposed changes to the requirements for confirmatory performance testing for dioxin/furan to provide flexibility in operations during confirmatory testing. Today we are finalizing those changes as proposed, and are making an additional revision to clarify which historical data are used to calculate normal operating values. These changes to § 63.1207(g)(2) revise the rule to: (1) Allow approval in the test plan of operations under a wider range for a particular parameter based on information justifying that operating within the required range may be problematic; and (2) allow the Administrator to accept test results based on operations outside of the range specified in the confirmatory test plan. Under the existing rule, sources are required to operate so that carbon monoxide or hydrocarbon levels, and operating parameter limits associated with the dioxin/furan emission standard, are within the range of the average values over the previous 12 months up to the maximum or minimum value, as appropriate, that is allowed. Stakeholders expressed concern that it was difficult to control operation of the combustor to the required range for each operating parameter simultaneously. In particular, they stated it will be difficult to operate within a potentially narrow range of carbon monoxide levels for sources that normally operate close to the 100 ppmv limit, because carbon monoxide levels are dependent on many combustion-related factors and cannot be directly "dialed in" as can be done for other parameters (e.g., activated carbon injection feedrate).

Today's amendment to § 63.1207(g)(2) also allows the Administrator to accept test results based on operations outside of the range specified in the test plan when a source did not anticipate a problem in maintaining the operating levels within the required range (and therefore did not request advance approval to do so), but because of unforeseen factors, was unable to maintain the required range. This provision would give permit writers discretion to accept emissions data obtained when operating outside of the prescribed range so that sources would not have to incur the costs of an additional confirmatory test. In determining whether to accept test

results from operations outside of the range specified in the test plan, permit writers would consider factors including: (1) the magnitude and duration of the deviation from the required range; (2) the historical range of the parameter (e.g., the range between the 10th and 90th percentile time-weighted average values for the parameter); (3) the proximity of the emission test results to the standard; and (4) the reason for not maintaining the required range. These factors determine whether the operations are reasonably representative of normal operations and how important it may be that test operations are truly representative of normal operations.

Most commenters support the proposed amendment, and we are revising § 63.1207(g)(2) as proposed with one minor change. The September 1999 final rule required you to exclude data pertaining to malfunctions, monitor calibrations, and nonhazardous waste operations when calculating normal operating levels. Today we are also requiring you to exclude data pertaining to startup and shutdown operations as well when calculating these averages. We did not propose to explicitly exclude you from using startup and shutdown data because you were previously not allowed to burn hazardous waste during these events. We conclude this change is now necessary given that some sources may, in limited circumstances, burn hazardous waste during startup and shutdown as a result of the changes to the startup, shutdown, and malfunction compliance requirements.

One commenter suggests that we should not require sources to exclude data pertaining to nonhazardous waste operations when calculating these averages. The commenter states that the amount of time sources operate while not burning hazardous waste is negligible and would not affect the calculated average values. We acknowledge that the time you operate while not burning hazardous waste (while also not in startup, shutdown, or malfunction mode) may be negligible, and thus may not significantly affect the calculated average values. However, we believe the data acquisition systems in use today are readily capable of omitting these data when calculating the averages, and excluding nonhazardous waste operating data is preferable. As a result, we conclude no change is necessary.

## V. How Can You Waive Operating Parameter Limits During Performance Testing and Pretesting?

Section 63.1207(h) automatically waives operating parameter limits (OPLs) during subsequent comprehensive performance tests under an approved performance test plan. Stakeholders raised two concerns that we addressed in the proposed rule: (1) OPLs defined in the Documentation of Compliance should be waived during the initial comprehensive performance test and associated pretesting; and (2) OPLs should be waived during testing and pretesting irrespective of whether the test plan has been approved. 66 FR at 35136–37.

### A. How Can You Waive OPLs During the Initial Comprehensive Performance Test?

We explained in the proposed rule why the rule need not be revised to waive OPLs during the initial comprehensive performance, or associated pretesting. This is because the OPLs are defined in the Documentation of Compliance (DOC) prior to the initial comprehensive performance test, and you may revise the DOC at any time prior to submitting the Notification of Compliance. To widen the operating envelope by making the OPLs less stringent, you need only provide information in the operating record justifying why operating under the less stringent OPLs is likely to ensure compliance with the emission standards. You would revise the DOC accordingly, and record the DOC in the operating record. Review and approval by regulatory officials is not required.

An industry commenter states the rule should be revised to explicitly waive the OPLs defined in the DOC during the initial performance test because revising the DOC and providing support that the revised OPLs ensure compliance with the emission standards may not be a simple process. We do not agree, and the commenter did not elaborate on why revising the DOC would be burdensome. Moreover, we note that the supporting information required for DOC modification must be developed and included in the performance test plan as justification to deviate from the current OPLs when the plan is submitted for review and approval.

We conclude that it is not necessary to revise the rule to waive OPLs during the initial comprehensive performance test and associated pretesting because you may revise the OPLs in the Documentation of Compliance at any time.

### B. How Can You Waive OPLs During Subsequent Comprehensive Performance Tests?

Section 63.1207(h) waives operating parameter limits (OPLs) during subsequent comprehensive performance tests under an approved performance test plan. In our proposal, we addressed the potential situation where you are facing the deadline for conducting the comprehensive performance test but the test plan has not been approved and regulatory officials have not extended the compliance date. We proposed to revise the rule to waive OPLs during subsequent comprehensive performance testing and associated pretesting, provided that you record the emission test results of the pretesting. We reasoned that the emission test results would confirm whether you were in compliance with the emission standards when operating under the less stringent OPLs.

Most commenters agree with the proposal but noted that: (1) We revised § 63.1207(h)(2) to waive OPLs during pretesting provided that emission test results are recorded but neglected to revise § 63.1207(h)(1) that waives OPLs under the performance test only when there is an approved test plan; and (2) in revising § 63.1207(h)(2), we excluded a phrase added in a technical correction (see 65 FR at 42293 (July 10, 2000)) allowing the Administrator to renew the 720 hour limit on pretesting. Both omissions were inadvertent, and we include them in today's final rule.

One commenter states that OPLs should not be waived if the test plan is not approved by EPA. We disagree. The OPLs are waived only during pretesting or performance testing where the source is conducting emissions testing and recording the results of the tests. This documentation of compliance or noncompliance with the emission standards serves as an incentive to operate the source under alternative OPLs that ensure compliance with the standards.

We conclude it is appropriate to revise the rule as proposed to waive OPLs during subsequent comprehensive performance testing and pretesting (provided that emissions test results during pretesting are recorded) and to allow the Administrator to renew the 720 hour limit on pretesting as promulgated in the July 10, 2000 technical correction. See revised §§ 63.1207(h).

## VI. What Are the Calibration Requirements for Temperature Measurement Devices?

The September 1999 final rule requires that thermocouples and other temperature measurement devices, such as pyrometers, must be recalibrated every three months. However, stakeholders are concerned that recalibrating these devices every three months can be particularly burdensome and offers little environmental benefit (i.e., among other things, no better assurance of compliance with the actual emission standards) over a less frequent calibration interval. In the July 2001 proposal, we discussed stakeholders' concerns and requested more information on the need for, and burden associated with, calibrating temperature measurement devices. See 66 FR at 35138. We also indicated that analysis of comments may lead us to conclude that § 63.1209(b)(2)(i) should be deleted in lieu of a requirement that each source develop an appropriate calibration procedure and frequency and include that information in the evaluation plan required by § 63.8(e)(3)(i).

Nearly all commenters agree with the need to provide flexibility in calibration frequency. Rather than delete § 63.1209(b)(2)(i), however, commenters suggest that we revise that provision to require calibration of temperature measurement devices using the manufacturer's procedures and calibration frequency. Also, commenters suggest that the calibration be performed at least once a year, unless a less frequent optical pyrometer calibration interval is approved by the Administrator.

We agree with commenters' suggestions and are revising § 63.1209(b)(2)(i) accordingly.

## VII. What Changes Are We Making to the Particulate Matter Operating Requirements for Sources Using Activated Carbon Injection and Carbon Beds?

We are amending two provisions that apply to activated carbon injection and carbon bed operating systems. First, we are deleting the regulatory language that requires sources using activated carbon injection systems to limit the particulate matter emissions to levels achieved during the comprehensive performance test. We instead are requiring these sources to establish operating limits on the particulate matter control device to assure compliance with both the mercury and dioxin/furan emission standards. Second, we are deleting the requirement for sources equipped with carbon beds to establish particulate

matter operating parameter limits for purposes of ensuring compliance with dioxin/furan and mercury emission standards.

We explained at proposal that it is inappropriate to explicitly require a site-specific particulate matter limit if a carbon injection system is used because the rule does not require continuous monitoring of particulate matter emissions. 66 FR at 35141. The use of a site-specific particulate matter limit was originally thought to go in tandem with a requirement to use particulate matter continuous emission monitors. Because we do not require sources to use particulate matter CEMS for compliance purposes, however, we concluded these site-specific particulate matter limits were inappropriate, and proposed to delete this requirement. We instead proposed to require these sources to establish operating limits on the particulate matter control device consistent with the approach used to control particulate emissions for compliance assurance with the semivolatile and low volatile metals emission standards.

The proposal also explained that particulate matter control downstream of a carbon bed is not needed to ensure compliance with the dioxin/furan and mercury emission standards. We noted that most, if not all, carbon bed systems in use today are positioned downstream from particulate matter control devices to minimize particulate buildup in the carbon bed. Carbon beds are also designed so that carbon leakage into the flue gas is minimized. As a result, we proposed to delete the language that requires sources equipped with carbon beds to control particulate matter emissions to ensure compliance with the dioxin/furan and mercury standards.

We received no adverse comments on these proposed amendments. We are, therefore, adopting the proposed revisions in today's rulemaking.

#### **VIII. How May You Comply Temporarily With Alternative, Otherwise Applicable MACT Standards?**

Section 63.1206(b)(1)(ii), as revised (66 FR 35087 (July 3, 2001)), allows you to stop complying with the emission standards and operating requirements of Subpart EEE temporarily after the hazardous waste residence time has expired and to comply with otherwise applicable Clean Air Act requirements promulgated under Sections 112 and 129, provided you document in the operating record that you are complying with those alternative standards. If the Agency has not promulgated Clean Air Act Section 112 or 129 MACT standards

for the nonhazardous waste burning class of sources in a particular source category, there are no otherwise applicable MACT standards for the source.

Stakeholders asked for clarification on the procedures during a transition between Subpart EEE standards and the otherwise applicable Section 112 or 129 MACT standards. In the July 3, 2001 proposed rule (66 FR at 35145–46) we explained that: (1) sources are affected sources only under Subpart EEE with respect to stack emissions, even when complying with the otherwise applicable MACT standards under an alternative mode of operation under § 63.1209(q); and (2) sources that elect to comply with otherwise applicable MACT standards after the hazardous waste residence time has expired must include all requirements of those MACT standards, not just operating limits, in the operating record, the Documentation of Compliance, the Notification of Compliance, and the title V permit application. We also proposed a revised approach to calculate rolling averages for compliance with operating parameter limits when changing modes of operation. We discuss these issues below, including comments received and our final determinations.

#### *A. What Are the Implications of Being an Affected Source Only Under Subpart EEE?*

At proposal, we explained that sources that invoke § 63.1206(b)(1)(ii) to become temporarily exempt from the emission standards and operating requirements of Subpart EEE remain an affected source under Subpart EEE (and only Subpart EEE) with respect to stack emissions requirements until the source meets the requirements specified in Table 1 to § 63.1200 for no longer being an affected source. To implement this clarification, we proposed to require you to define the period of compliance with the otherwise applicable Clean Air Act requirements promulgated under Sections 112 and 129 as an alternative mode of operation under § 63.1209(q). Thus, during this mode of operation, you would be exempt from the emission standards and operating requirements of Subpart EEE, except the requirements for the otherwise applicable Section 112 and 129 MACT standards you specify under § 63.1209(q).

We also proposed to revise the rule to clarify that otherwise applicable Section 112 and 129 MACT standards are “applicable requirements” under Subpart EEE if you elect to operate under that mode of operation after the hazardous waste residence time has expired. Because the source is an

affected source only under Subpart EEE, those alternative, otherwise applicable MACT standards must be specified in a manner that is enforceable under Subpart EEE. Consequently, you must specify those alternative, otherwise applicable MACT standards, including not only the operating parameter limits under the Section 112 and 129 standards, but also the associated monitoring and compliance requirements and notification, reporting, and recordkeeping requirements, in the operating record under § 63.1209(q), the Documentation of Compliance (DOC) under § 63.1211(d), the Notification of Compliance (NOC) under § 63.1207(j), and the title V permit application.<sup>8</sup>

Commenters generally agree with our proposed approach to implement the alternative, otherwise applicable Section 112 and 129 MACT requirements after the hazardous waste residence time has expired. One commenter suggests, however, that we clarify that, if the Agency has not promulgated Section 112 or 129 MACT requirements applicable to the source, the source is exempt from operating requirements during that mode of operation. We agree with the commenter and addressed this situation in the proposal in footnote 37 (66 FR at 35145). If the Agency has not promulgated Section 112 or 129 MACT requirements applicable to the source, the source is exempt from operating requirements under the alternative, otherwise applicable MACT standards mode of operation provided that: (1) The hazardous waste residence time has expired; and (2) the source establishes this mode of operation under § 63.1209(q) and notes in the operating record when it enters and leaves this mode of operation. The source must nonetheless identify this mode of operation (i.e., where it is exempt from operating requirements) in the DOC, NOC, and title V permit application to assist compliance assurance.<sup>9</sup>

One commenter also suggests that the rule should be revised to waive the automatic waste feed cutoff requirements under § 63.1206(c)(3) when a source elects to continue operating under the Subpart EEE emission standards and operating requirements even though the hazardous waste residence time has

<sup>8</sup> We also noted in the proposal that, under § 70.6(a)(9), the title V permit must contain terms and conditions for all reasonably anticipated modes of operation, and thus, must contain the alternative, otherwise applicable MACT requirements.

<sup>9</sup> Please note such source could conceivably be subject to case-by-case permitting under section 112(j)(2) or 112(g)(2).

expired (i.e., the source elects not to comply with the alternative, otherwise applicable MACT standards). The commenter reasons that, because the hazardous waste residence time has expired, there is no need to require compliance with the hazardous waste feed cutoff requirements. We conclude that no regulatory revisions are needed because it is self-evident which provisions are applicable after the hazardous waste residence time has expired. For example, it is self-evident that the general requirements of § 63.1209(c)(3)(i) for the automatic waste feed cutoff system to cutoff the hazardous waste feed are not applicable, because hazardous waste is not being fed. Other requirements continue to be applicable, however. For example, § 63.1206(c)(3)(iii) continues to apply because it requires you to continue monitoring operating parameter limits after a cutoff and prohibits you from restarting the hazardous waste feed until the operating parameters and emission levels are within the specified limits.

After considering comments on the proposed rule, we conclude that, as proposed, § 63.1209(q) should be revised to add paragraph (q)(1) to provide requirements for operating under otherwise applicable Section 112 and 129 MACT standards.

#### *B. How Are Rolling Averages Calculated When Changing Modes of Operation?*

Section 63.1209(q) as originally promulgated requires you to begin calculating rolling averages anew (i.e., without considering previous recordings) when you begin complying with the operating parameter limits for an alternative mode of operation. We now believe this approach is problematic as it was to be implemented. As you change modes of operation, you would not be able to calculate a 60-minute rolling average, for example, until you had collected 60 one-minute average recordings for the parameter. Thus, for the initial hour after changing a mode of operation, you would not be able to document compliance with the operating parameter limits. To address this concern, we proposed that you would use the most recent continuous monitoring system recordings when operating under a mode of operation to calculate rolling averages when renewing operations under that same mode. Under this approach, to calculate an hourly rolling average when you changed to an alternative mode of operation, you would add the first one-minute average recording to the 59 one-minute average recordings when you last operated under that mode of

operation. Thus, rolling averages could be calculated after the first minute of renewing operations under a mode of operation.

Several commenters express concern that the proposed approach of retrieving one-minute average recordings from when you last operated under that mode of operation to calculate a rolling average can place a significant burden on a source's data acquisition system. The data acquisition system would be required to store and retrieve 59 minutes from a mode of operation under which the source may operate only infrequently. This approach would increase the memory requirements of a source's data acquisition system and increase programming efforts and costs because of the increased number of data registers used for storage.

Commenters suggest two alternative approaches to calculate rolling averages when changing modes of operation. One alternative, the "Start Anew" approach, is the currently promulgated approach, but it would be implemented differently. The other alternative approach, the "Seamless Transition" approach, is an approach that we discussed in a footnote in the July 3, 2001 proposed rule. We agree with commenters' concerns about allowing only one approach to calculate rolling averages after a transition to a new mode of operation (i.e., the "Retrieval Approach"), and have promulgated all three approaches, as discussed below, because they are equally effective. You may use any of these approaches.

#### 1. How Does the Retrieval Approach Work?

The retrieval approach works as described above and in the July 3, 2001 proposed rule. You use the most recent continuous monitoring system recordings when operating under a mode of operation to calculate rolling averages when renewing operations under that mode. Although this approach may be burdensome in some situations as commenters state, it may be preferable in some situations to the other two approaches discussed below. See new § 63.1209(q)(2)(i).

#### 2. How Does the Start Anew Approach Work?

Under the start anew approach, you calculate rolling averages anew without considering previous recordings. This is the currently promulgated approach. See old § 63.1209(q) and new § 63.1209(q)(2)(ii).

Under today's rule, however, you are required to implement the approach differently. As discussed above, this approach is problematic if implemented

as currently required because you are not able to calculate an hourly rolling average, for example, until you record 60 one-minute average values for a parameter under the new mode of operation. During that hiatus, you cannot document compliance with the OPLs. Under today's rule, to calculate an hourly rolling average after changing a mode of operation, you must calculate the hourly rolling average as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate an hourly rolling average. Similarly, to calculate a 12-hour rolling average immediately after changing a mode of operation, you must calculate the 12-hour rolling average as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate a 12-hour rolling average. See new § 63.1209(q)(2)(ii). This is a conservative approach to calculating rolling averages because you are not able to use the full averaging period to lessen the impact of abnormally high one-minute recordings until you accumulate, for example, 60 one-minute averages for the hourly rolling average.

You may not transition to a new mode of operation using this approach if the most recent operation in that mode resulted in an exceedance of an applicable emission standard measured with a CEMS or operating parameter limit prior to the hazardous waste residence time expiring. This condition ensures that sources cannot avoid compliance with § 63.1206(c)(3)(iii) after an automatic waste feed cutoff by ignoring the parameter recordings that occurred when hazardous waste was in the combustion chamber and the OPLs were exceeded, and then quickly restarting the hazardous waste feed once the operating parameters and emission levels are within the specified limits.<sup>10</sup> The purpose of this provision is to provide an additional incentive to avoid exceedances when hazardous waste is in the combustion chamber by delaying restart of the hazardous waste feed until the operating parameters (and emissions measured with a CEMS) are within the limits.

#### 3. How Does the Seamless Transition Approach Work?

Several commenters recommend the seamless transition approach that we discussed in footnote 41 in the July 3, 2001 proposal. 66 FR at 35146. Under this approach, you continue calculating

<sup>10</sup> See letter form Jim Berlow, USEPA, to Michelle Luck, Cement Kiln Recycling Coalition, dated June 21, 2001 (in the docket for this rulemaking).

rolling averages using data from the previous operating mode provided that both the operating limits and the averaging period for the parameter are the same for both modes of operation. We agree that this approach is an appropriate alternative and finalize it as new § 63.1209(q)(2)(iii). Note, however, that if parameter recordings from a previous mode of operation where you may not be burning hazardous waste contribute to an exceedance in the new mode of operation when you are burning hazardous waste and hazardous waste remains in the combustion chamber, you have nonetheless exceeded an emission standard or operating limit when hazardous waste is in the combustion chamber.

#### **IX. What Are the Procedures for Allowing Use of Less Sensitive Bag Leak Detection Systems?**

In the July 2001 proposed rule, we requested comment on whether the bag leak detection system requirements should be revised to explicitly allow sources to petition the Administrator to use bag leak detection monitors that have detection limits higher than 1.0 milligrams per actual cubic meter as required by the September 1999 final rule. See 66 FR at 35134. We reasoned that less sensitive bag leak detectors would be acceptable in situations where the detector could nonetheless detect subtle changes in baseline, normal mass emissions of particulate matter. In determining whether the detector is sensitive enough to detect subtle changes in baseline, normal mass emissions, the permitting authority could consider information such as results of site-specific tests that document the detector provides a measurable and repeatable change in opacity output with an increase in particulate matter mass emissions at normal emission levels.

All commenters support this revision, saying that we should explicitly allow a source to petition the Agency using the alternative monitoring provisions under § 63.1209(g)(1) to use a less sensitive bag leak detector. Therefore, we are revising new § 63.1206(c)(7)(ii)(A)(1) by appending it with the following phrase: “\* \* \* unless a source demonstrates, pursuant to the procedures in § 63.1209(g)(1), that a higher sensitivity would adequately detect bag leaks.”

#### **Part Four-What Technical Corrections Are Being Made in Today's Rule?**

##### **I. What Corrections Are We Making to Part 63, Subpart EEE?**

We are making several corrections to 40 CFR part 63, Subpart EEE, published on September 30, 1999.

##### *A. Several Typographical Errors Are Corrected*

In today's rule, we correct a typographical error shown in entry (2) in Table 1 to § 63.1200 by replacing the word “extent” with “extend.”

We also revise by italicizing several paragraph numbers and headings that will make the regulatory text easier to read. The paragraphs revised include §§ 63.1206(b)(5)(i)(C)(1), 63.1209(g)(1)(B)(1) through (3), 63.1209(g)(1)(C)(1) and (2), 63.1209(l)(1), 63.1209(m)(3), 63.1209(n)(4), and 63.1209(o)(1).

We also correct several typographical errors. We correct § 63.1207(f)(1)(x) by removing an extra “)” from the paragraph. Section 63.1207(m)(4)(i) is corrected by capitalizing “Notification of Compliance.” We correct a typographical error in the first sentence of § 63.1209(b)(5)(iii)(A) by removing the word “to” before the word “monitoring.” The typographical error in the heading of paragraph § 63.1209(k)(8)(ii) is also corrected. We revise the paragraph heading from “mum time in-use” to “Maximum time in-use.” Finally, we correct a typographical error in the first sentence of § 63.1213(a) by replacing the word “data” with “date.”

##### *B. Several Citations Are Corrected*

In the May 14, 2001 rule, we removed the Notice of Intent to Comply (NIC) provisions that were vacated in *Chemical Manufacturers Association v. EPA*, 217 F.3d 861 (D.C. Cir. 2000). When we removed the NIC requirements from §§ 63.1210 and 63.1211 and redesignated follow-on paragraphs in those sections, we did not also revise several references to the redesignated paragraphs of §§ 63.1210 and 63.1211. The paragraphs revised include §§ 63.1206(b)(11), 63.1206(c)(1)(i), 63.1207(j)(1)(ii), 63.1207(j)(3), 63.1209(a)(1)(ii)(A), 63.1209(f)(1), and 266.100(b)(1).

In the May 14, 2001 rule, we also made changes to the compliance dates provisions of § 63.1206(a). However, when we redesignated paragraph (a)(3) to (a)(2) in that rule, we inadvertently failed also to revise a cite within old paragraph (a)(3). Today's rule corrects the reference in § 63.1206(a)(2) from paragraph (a)(3)(ii) to (a)(2)(ii).

We also correct an incorrect citation in § 63.1207(f)(1)(xvii). This paragraph inadvertently refers to § 63.1209(m)(5)(i) instead of § 63.1209(n)(5)(i). We make that correction today.

Finally, we correct an incorrect citation in § 63.1207(m)(4)(ii). This paragraph inadvertently refers to § 63.1207(m)(3)(iv) instead of § 63.1207(m)(4)(i). We make that correction today.

##### **II. What Correction Are We Making to § 266.100?**

We are making two corrections to § 266.100(d) to correct errors made when we promulgated the September 30, 1999 final rule. When we added § 266.100(b) to address integration of the MACT standards and redesignated paragraphs (b), (c), (d), (e), and (f), as (c), (d), (e), (f), and (g), respectively, we did not revise several references within these paragraphs. Today's rule revises the reference to old paragraph (c)(2) in paragraph (d)(1)(i)(B) to (d)(2); the reference to old paragraph (c)(1)(iii) in paragraph (d)(2)(i) to (d)(1)(iii); the reference to old paragraph (c)(1)(iii) in paragraph (d)(2)(ii) to (d)(1)(iii); the reference to old paragraphs (c)(1) and (c)(3) in paragraph (d)(3) to (d)(1) and (d)(3), respectively; the reference to old paragraph (c)(1) in paragraph (d)(3)(i) to (d)(1); and the reference to old paragraphs (c)(3) and (c)(1)(ii) in paragraph (d)(3)(i)(D) to (d)(3) and (d)(1)(ii), respectively.

In addition, when we added § 266.100(h) in the September 30, 1999 final rule to provide reduced sampling and analysis and notification and recordkeeping requirements for secondary lead smelters complying with the Secondary Lead Smelting NESHAP, we inadvertently deleted regulatory language in old paragraph (c)(3) that was redesignated paragraph (d)(3). We restore that regulatory language in (d)(3) today.

Finally, we correct a reference in § 266.100(a) from paragraphs (b), (c), (d), and (f) to paragraphs (b), (c), (d), (g), and (h).

##### **III. What Correction Are We Making to § 270.42(j)(1): Combustion Facility Changes To Meet Part 63 MACT Standards?**

We are correcting an error in the RCRA permitting regulations relating to the vacature of the Notification of Intent to Comply (NIC) and its associated requirements. On October 11, 2000, the D.C. Circuit issued a mandate to vacate the Notification of Intent to Comply provisions of 40 CFR part 63, Subpart EEE (*Chemical Manufacturers Association v. EPA*, 217 F. 3d 861, D.C.

Cir. 2000). We subsequently directed the Office of the Federal Register to remove those provisions from the Code of Federal Regulations on May 14, 2001 (66 FR 24270). Since sources were required to comply with the NIC requirements in order to be eligible for the RCRA Streamlined Permit Modification procedure, we also modified § 270.42(j)(1) to address the court's mandate.

Previously, § 270.42(j)(1) required owners or operators to first comply with the NIC requirements of § 63.1210 before requesting a streamlined RCRA permit modification. Sources were required to submit their final NICs by October 2, 2000. Since the court's mandate was not issued until after existing sources were required to submit their NICs, we determined that the court's action did not impact the sources' eligibility for a streamlined RCRA permit modification, provided, of course, that they submitted their NICs by October 2, 2000, as required by the rule. To clarify this in the regulatory language, we revised § 270.42(j)(1) to state that owners or operators must have complied with the Notification of Intent to Comply requirements of § 63.1210 that were in effect prior to May 14, 2001 in order to request a streamlined permit modification. In doing so, we incorrectly referred to the date that we removed the NIC provisions from the federal regulations (May 14, 2001) as the date on which those provisions were no longer in effect. Instead, we should have referenced the date of the court's mandate (October 11, 2000). The removal of the requirements from the federal regulations was only a ministerial action in acknowledgment of the court's October 11, 2000 order to vacate. Thus, in today's rulemaking, we are correcting the referenced date in § 270.42(j)(1) from May 14, 2001 to October 11, 2000.

#### **IV. What Correction Are We Making to Table 1 to Subpart EEE—General Provisions Applicable to Subpart EEE?**

Table 1 to Subpart EEE identifies which General Provisions provided under Subpart A, Part 63, are not applicable to hazardous waste combustors. We are amending that table to: (1) conform to revisions to Subpart EEE promulgated in a related final rule establishing interim emission standards and which was published in the **Federal Register** on February 13, 2002; (2) to make several other technical corrections; and (3) to clarify the explanation of the applicability of the General Provisions.

We are making the following specific corrections to Table 1 to Subpart EEE:

a. The applicability explanations for §§ 63.6(e), (f), and (h), and 63.7(e) are corrected to acknowledge that the emission standards and operating requirements of Subpart EEE do not apply during startup, shutdown, and malfunctions;

b. The applicability explanation for § 63.7(a) is clarified to note that § 63.1207(e)(3) allows you to petition the Administrator under § 63.7(h) to provide an extension of time to conduct a performance test;

c. The applicability explanation for § 63.8(c) is revised to correct the reference to § 63.1211(c) rather than § 63.1211(d);

d. The applicability explanations for §§ 63.8(c) and (g) are revised to delete the reference to applicability only to cement kilns because it is self-evident that only cement kilns are subject to an opacity emission standard under Subpart EEE. Further, if other sources were to use a COMS under alternative monitoring or other provisions, those sources would be required to comply with § 63.8(c); and

e. The applicability explanation for § 63.9(f) is corrected to require compliance with that paragraph for sources that are allowed under § 63.1209(a)(1)(v) to use visible determinations of opacity for compliance in lieu of a COMS.

#### **Part Five—What Are the Analytical and Regulatory Requirements?**

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

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Today's final action was submitted to OMB for review and confirmation. Pursuant to the terms of the Executive Order, the Agency, in conjunction with OMB has determined that today's final amendments rule does not represent a "significant regulatory action." Today's final action does not meet any of the criteria identified above. Changes to this section of the Preamble made in response to OMB suggestions or recommendations are documented in the public record.

The aggregate annualized social cost for this final rule are less than \$100 million. Furthermore, this rule is not expected to adversely effect, 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. The benefits to human health and the environment resulting from today's final rule have not been monetized but are believed to be less than \$100 million per year.

#### **II. What Economic and Equity Analyses Were Completed in Support of the Proposed Rule?**

We prepared two economic support documents for the July 3, 2001 proposed rule: Assessment of Potential Costs, Benefits and Other Impacts, NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments to the Final Rule: NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, September 30, 1999, dated May, 2001, and Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors Technical Amendments to the Final Rule: NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, September 30, 1999, dated May, 2001. Both documents are available in the docket established for the July 3, 2001 action.

The Assessment document addressed both the thirteen direct final amendments and the twenty proposed amendments. Three of the proposed amendments in the direct final rule are finalized in today's rule and are projected to result in cost savings. Our analysis found that the amendment revising the alternative to the particulate matter standard for incinerators resulted in the single most significant projected cost savings. This amendment accounted for an estimated 77 percent, or \$707,500, of the total quantifiable annual cost savings of \$918,500. The direct final amendment addressing



feedstream analysis was projected to result in annual cost savings of \$180,000, while the amendment on deletion of one-time notification of compliance accounted for the remaining cost savings. The total projected cost burden associated with the July 3, 2001 direct final amendments was estimated at \$8,700 per year. The analysis found that most of the cost burdens are easily quantifiable, whereas many of the cost savings were not readily quantifiable and, are therefore not included in the aggregate estimate.

We were able to develop a quantified cost savings estimate for only one of the twenty proposed amendments in the Assessment. The amendment addressing method 23 as an alternative to method 0023A for dioxin/furans was projected to result in cost savings of \$102,600 per year. Five of the twenty proposed amendments were projected to result in an aggregate quantifiable cost burden of \$361,100 per year. Approximately 45 percent of this increased cost burden would be on the government. The proposed amendment revising the operator training and certification provisions was estimated to account for 84 percent of the total estimated cost burden.

No measurable impacts were projected in any of the following categories related to equity and regulatory concerns: environmental justice; children's health protection; unfunded mandates; tribal governments; and regulatory takings.

The RFSA document prepared in support of the July 3, 2001 actions analyzed potential impacts to small entities associated with both the direct final and proposed amendments. Based on our worst-case scenario, we found that there would not be a significant economic impact on any of the small business combustor companies subject to rule (amendment) requirements.

### III. What Substantive Comments Were Received on the Cost/Economic Aspects of Proposed Rule?

We received no substantive comments on the cost/economic issues associated with either the direct final or proposed amendments. Selected commenters, however, incorporated minor references to cost issues as part of their comments on other issues. One commenter indicated that unnecessary testing cost increases and complications would result without the flexibility to use DRE data in lieu of testing. The incorporation of this amendment into today's final rule relieves this cost concern. Two commenters indicated support for the Agency's proposed amendment that would allow use of site-specific operator

training and certification programs. This flexibility was supported as a means of avoiding the burden and complications associated with training requirements established under the final rule. The incorporation of this amendment into today's final rule addresses this cost concern.

Four commenters referenced cost issues associated with the amendment addressing the time extension for performance testing. These commenters generally supported the amendment but felt, in some cases, that it did not go far enough to address unforeseen circumstances and to mitigate the concerns associated with the potential for unnecessary performance testing and related costs. We are sensitive to these concerns; however, we continue to believe that an open-ended test date will not provide an incentive for either sources or regulatory officials to resolve differences related to the test plan. We believe that this stimulus will help mitigate unnecessary cost impacts.

### IV. What Are the Potential Costs and Benefits of Today's Final Rule?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. A rule that generates positive net welfare would be advantageous to society and should be promulgated. A rule that results in negative net welfare to society should be avoided, assuming all other factors are equal.

We have assessed the impacts of this final rule in our economic support document: Assessment of Potential Costs, Benefits and Other Impacts, and, Regulatory Flexibility Screening Analysis (RFSA) for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Amendments to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule, September 30, 1999, dated January 2, 2002. This document is available in the docket established in support of today's action. A brief summary of findings is presented below.

Today's rule revises several requirements promulgated in the September 30, 1999 rule. Cost impacts associated with the final amendments are not fully quantifiable. All amendments, however, are projected to result in zero cost impacts or national annual net cost savings to industry, as projected from the baseline of the September 30, 1999 rule. The total cost burden to government associated with the final amendments is estimated at \$160,000 per year. No quantifiable

benefits and/or environmental implications have been identified.

### V. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.?

The RFA 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 organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each NAICS code by the Small Business Administration (SBA).

The Agency has examined the potential effects today's final rule may have on small entities, as required by the RFA/SBREFA. We have found that four of the final amendments are projected to result in measurable cost impacts. The amendment addressing feedstream analysis for organic HAPs would result in cost savings but we expect that only larger operations would be impacted. The other three final amendments are projected to result in a measurable cost burden. Of these three, only the amendment addressing operator training and certification may potentially result in a cost burden to small hazardous waste combustors. Under an assumed worst-case, or high end cost scenario, we estimate maximum total costs on each "small" hazardous waste combustor company to average \$25,700 ( $\$154,000/6 = \$25,700$  per "small" source). Based on this high cost scenario, impacts on an individual small company basis would be no more than 0.71 percent of the annual gross sales. This figure is less than our threshold of 1 percent for determination of potentially significant economic impact. This amendment, however, was designed to ultimately provide regulatory relief. The lack of available data prevented us from quantifying cost savings potentially associated with this amendment. Overall impacts are likely to be considerably less than the 0.71 percent "high-end" estimate presented here. Based on this analysis we believe that it is reasonable to conclude that

there would not be a significant economic impact to any of the small business combustor companies potentially subject to rule requirements. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Full details of the small entity analysis are presented in our report: Assessment of Potential Costs, Benefits and Other Impacts, and, Regulatory Flexibility Screening Analysis (RFSA) for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule—Amendments to the NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors: Final Rule, September 30, 1999, dated January 2, 2002. This document is available in the docket established in support of today's action.

#### **VI. Was the Unfunded Mandates Reform Act Considered In This Final Rule?**

Executive Order 12875, "Enhancing the Intergovernmental Partnership" (October 26, 1993), calls on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments. Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. 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 single 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.

Today's final rule is not subject to the requirements of UMRA. Today's final rule will not result in \$100 million or more in expenditures. The aggregate annualized social costs for today's final rule are projected to be less than one million dollars. Furthermore, today's rule is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. We have determined that this rule will not significantly or uniquely affect small governments.

#### **VII. Were Equity Issues and Children's Health Considered In This Final Rule?**

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

##### *(1) Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"*

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 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. Today's final rule is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

##### *(2) Executive Order 12898: Environmental Justice*

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3-17). We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

#### **VIII. What Consideration Was Given to Tribal Governments In This Final Rule?**

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (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" is 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 the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rule 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 on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

#### **IX. Were Federalism Implications Considered in Today's Final Rule?**

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" 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 final 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 the Order. Thus, Executive Order 13132 does not apply to this rule.

#### **X. Were Energy Impacts Considered?**

Executive Order 13211, "Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use" (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse effects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule is not likely to have any significant adverse impact on factors affecting energy supply. We believe that Executive Order 13211 is not relevant to this action.

#### **XI. Paperwork Reduction Act**

We have prepared an Information Collection Request (ICR) document (ICR

No. 1773.07) listing the information collection requirements of this final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050-0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington DC 20460, or by calling (202) 260-2740.

The public burden associated with this final rule (which is under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 7.6 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average \$440 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

#### **XII. National Technology Transfer and Advancement Act of 1995**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104-113, § 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.

This final rule does not require the implementation of technical standards, as defined above; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) do not apply.

#### **XIII. The Congressional Review Act (5 U.S.C. 801 *et seq.*), as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)**

*Is Today's Final Action Subject to Congressional Review?*

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major Rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This final rule will become effective on February 14, 2002.

#### **Part Six—Delegation Implications**

##### **I. What Is the Authority for the Final Amendment Rule?**

Unlike the September 30, 1999 Final HWC NESHAP rule, this rule does not include any significant changes or additions affecting the RCRA program. This Final Amendment Rule amends the promulgated standards located in 40 CFR part 63, subpart EEE. Therefore, this discussion pertains only to delegation of amendments to State, Local, and Tribal (S/L/T) agencies pursuant to the CAA program.

Section 112(l) of the CAA allows us to delegate the authority to S/L/T programs to implement and enforce emission standards for pollutants subject to section 112 regulations. Thus, a S/L/T agency that receives 112(l) delegation can implement and enforce the amendments being made today. A S/L/T agency also can implement the amendments for Title V major sources (see 40 CFR 70.2) via their Title V authority because it is independent of their delegation status. By having an approved Title V program, the S/L/T agency has demonstrated that it has the legal authority, resources, and expertise to implement and enforce standards for section 112 pollutants.

As before, we encourage S/L/T agencies to apply for and receive 112(l) delegation for this rule. The key advantages afforded to S/L/T agencies

who receive delegation are that they become the primary enforcement authority and can exercise delegable provision authorities. Additionally, it ensures clear and consistent requirements for affected sources and regulators. For example, a source need only report compliance assurance monitoring to its primary enforcement authority.

State, Local, and Tribal agencies still have the ability to choose which delegation options to use when applying for delegation of Federal authorities for this rule. The 112(l) delegation process begins when the S/L/T agency applies for delegation of a section 112 rule without changes (straight delegation), by rule adjustment, substitution of requirements, state program approval (SPA), or equivalency by permit (EBP).<sup>11</sup> Also, the partial approval option is available for any S/L/T who cannot or chooses not to take full delegation of an entire standard. The drawback to this option is that it can create inconsistent requirements since the S/L/T agency will enforce portions of the standard, while we will enforce the remaining portions.

**II. Why Should I Apply for Delegation of This Rule?**

This rule will be effective upon promulgation. As with the Phase I NESHAP, a S/L/T agency will need to incorporate the amendments of this rule into a major source's new, renewed, or revised Title V permit regardless of whether it has received delegation. However, by receiving delegation of 112(l), a S/L/T agency can approve minor changes to a Federal NESHAP. For instance, it can substitute an emission limitation that is more stringent than a Federal standard.

In light of the benefits afforded to a S/L/T agency if it receives 112(l)

delegation, we recognize that the process of applying for and receiving delegation can be a lengthy one. This may be especially true for those agencies that do not have established agreements in place to receive automatic delegation of unchanged standards. There are agencies who choose to utilize the delegation options provided under 112(l), which are not as straightforward as the unchanged standards. In these cases, the review period required when applying for one of the delegation options combined with a state's legislative proceedings, are factors that can prolong the delegation process. Therefore, we encourage the S/L/T agency to do what makes sense given circumstances relevant to timing issues and resource needs.

**List of Subjects**

*40 CFR Part 63*

Air pollution control, Hazardous substances, Incorporation by reference Reporting and recordkeeping requirements.

*40 CFR Part 266*

Energy, Environmental Protection Agency, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

*40 CFR Part 270*

Administrative practice and procedure, Confidential business information, Environmental Protection Agency, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: February 7, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

**PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

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

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

2. Section 63.14 is amended by adding paragraph (i) to read as follows:

**§ 63.14 Incorporations by reference.**

\* \* \* \* \*

(i) *ASME standard number QHO-1-1994 and QHO-1a-1996 Addenda.* This standard is titled as "Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this document from the American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017. You may inspect a copy at the RCRA Information Center, Crystal Gateway One, 1235 Jefferson Davis Highway, Arlington, VA 22202, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

3. Section 63.1200 is amended by revising entry (2) in Table 1 in paragraph (b) to read as follows:

**§ 63.1200 Who is subject to these regulations?**

\* \* \* \* \*

(b) \* \* \*

TABLE 1 TO § 63.1200.—HAZARDOUS WASTE COMBUSTORS EXEMPT FROM SUBPART EEE

If * * *	And If * * *	Then * * *
*	*	*
(2) You are a research, development, and demonstration source.	You operate for no longer than one year after first burning hazardous waste (Note that the Administrator can extend this one-year restriction on a case-by-case basis upon your written request documenting when you first burned hazardous waste and the justification for needing additional time to perform research, development, or demonstration operations).	You are not subject to this subpart (Subpart EEE). This exemption applies even if there is a hazardous waste combustor at the plant site that is regulated under this subpart. You still, however, remain subject to § 270.65 of this chapter.
*	*	*

<sup>11</sup> Refer to Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities; Final Rule at 65

FR 55810 or the CAA Delegation for the HWC NESHAP fact sheet at [www.epa.gov/epaoswer/](http://www.epa.gov/epaoswer/)

[hazwaste/combust/toolkit/coverpage.htm](http://hazwaste/combust/toolkit/coverpage.htm) for further information on delegation procedures.

\* \* \* \* \*

4. Section 63.1201 is amended by adding the definition of "Preheater tower combustion gas monitoring location" to paragraph (a) in alphabetical order to read as follows:

**§ 63.1201 Definitions and acronyms used in this subpart.**

(a) \* \* \*

*Preheater tower combustion gas monitoring location* means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

\* \* \* \* \*

5. Section 63.1204 is amended by revising paragraph (d)(1)(iii) to read as follows:

**§ 63.1204 What are the standards for hazardous waste burning cement kilns?**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) You must calculate rolling averages for operating parameter limits as provided by § 63.1209(q)(2).

\* \* \* \* \*

6. Section 63.1206 is amended by:

a. Revising the first sentence of paragraph (a)(2)(i).

b. Redesignating paragraph (a)(4) as (a)(3).

c. Revising paragraphs (b)(5)(i)(C)(1), (b)(6)(i) and (b)(6)(ii), (b)(7), (b)(11), and (b)(13)(i).

d. Revising paragraphs (c)(1)(i) introductory text, (c)(5)(i)(C), (c)(6), and (c)(7)(ii).

e. Adding paragraph (c)(5)(i)(D).

The revisions and additions read as follows:

**§ 63.1206 When and how must you comply with the standards and operating requirements?**

(a) \* \* \*

(2) \* \* \*

(i) If you commenced construction or reconstruction of your hazardous waste combustor after April 19, 1996, you must comply with this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraph (a)(2)(ii) of this section. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) \* \* \*

(C) \* \* \*

(1) Except as provided by paragraph (b)(5)(i)(C)(2) of this section, after the

change and prior to submitting the notification of compliance, you must not burn hazardous waste for more than a total of 720 hours (renewable at the discretion of the Administrator) and only for the purposes of pretesting or comprehensive performance testing. Pretesting is defined at § 63.1207(h)(2)(i) and (ii).

\* \* \* \* \*

(6) \* \* \*

(i) If a DRE test performed pursuant to § 63.1207(c)(2) is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

(ii) If during this acceptable DRE test you did not obtain hydrocarbon emissions data sufficient to document compliance with the hydrocarbon standard, you must either:

(A) Perform, as part of the performance test, an "equivalent DRE test" to document compliance with the hydrocarbon standard. An equivalent DRE test is comprised of a minimum of three runs each with a minimum duration of one hour during which you operate the combustor as close as reasonably possible to the operating parameter limits that you established based on the initial DRE test. You must use the highest hourly rolling average hydrocarbon emission level achieved during the equivalent DRE test to document compliance with the hydrocarbon standard; or

(B) Perform a DRE test as part of the performance test.

(7) *Compliance with the DRE standard.* (i) Except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section:

(A) You must document compliance with the Destruction and Removal Efficiency (DRE) standard under §§ 63.1203 through 63.1205 only once provided that you do not modify the source after the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(1) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(2) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) Sources that feed hazardous waste at a location in the combustion system other than the normal flame zone must demonstrate compliance with the DRE standard during each comprehensive performance test;

(iii) For sources that do not use DRE previous testing to document conformance with the DRE standard pursuant to § 63.1207(c)(2), you must perform DRE testing during the initial comprehensive performance test.

\* \* \* \* \*

(11) *Calculation of hazardous waste residence time.* You must calculate the hazardous waste residence time and include the calculation in the performance test plan under § 63.1207(f) and the operating record. You must also provide the hazardous waste residence time in the Documentation of Compliance under § 63.1211(c) and the Notification of Compliance under §§ 63.1207(j) and 63.1210(b).

\* \* \* \* \*

(13) \* \* \*

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average

(monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(1) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(2)(i) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(ii) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(3)(i) If the only firing location of hazardous waste upstream (in terms of

gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1206(b)(7).

(ii) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

\* \* \* \* \*

(c) \* \* \* (1) \* \* \* (i) You must operate only under the operating requirements specified in the Documentation of Compliance under § 63.1211(c) or the Notification of Compliance under §§ 63.1207(j) and 63.1210(b), except:

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

(C) Upon prior written approval of the Administrator, an alternative means of control to provide control of combustion system leaks equivalent to maintenance

of combustion zone pressure lower than ambient pressure; or

(D) Upon prior written approval of the Administrator, other technique(s) which can be demonstrated to prevent fugitive emissions without use of instantaneous pressure limits; and

\* \* \* \* \*

(6) *Operator training and certification.*

(i) You must establish training programs for all categories of personnel whose activities may reasonably be expected to directly affect emissions of hazardous air pollutants from the source. Such persons include, but are not limited to, chief facility operators, control room operators, continuous monitoring system operators, persons that sample and analyze feedstreams, persons that manage and charge feedstreams to the combustor, persons that operate emission control devices, and ash and waste handlers. Each training program shall be of a technical level commensurate with the person's job duties specified in the training manual. Each commensurate training program shall require an examination to be administered by the instructor at the end of the training course. Passing of this test shall be deemed the "certification" for personnel, except that, for control room operators, the training and certification program shall be as specified in paragraphs (c)(6)(iii) through (c)(6)(vi) of this section.

(ii) You must ensure that the source is operated and maintained at all times by persons who are trained and certified to perform these and any other duties that may affect emissions of hazardous air pollutants. A certified control room operator must be on duty at the site at all times the source is in operation.

(iii) Hazardous waste incinerator control room operators must:

(A) Be trained and certified under a site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) Be trained under the requirements of, and certified under, the American Society of Mechanical Engineers Standard Number QHO-1-1994 and QHO-1a-1996 Addenda (incorporated by reference—see § 63.14(e)). If you choose to use the ASME program:

(1) Control room operators must, prior to the compliance date, achieve provisional certification, and must submit an application to ASME and be scheduled for the full certification exam. Within one year of the compliance date, control room operators must achieve full certification;

(2) New operators and operators of new sources must, before assuming their

duties, achieve provisional certification, and must submit an application to ASME, and be scheduled for the full certification exam. Within one year of assuming their duties, these operators must achieve full certification; or

(C) Be trained and certified under a State program.

(iv) Cement kiln and lightweight aggregate kiln control room operators must be trained and certified under:

(A) A site-specific, source-developed and implemented program that meets the requirements of paragraph (c)(6)(v) of this section; or

(B) A State program.

(v) Site-specific, source developed and implemented training programs for control room operators must include the following elements:

(A) Training on the following subjects:

(1) Environmental concerns, including types of emissions;

(2) Basic combustion principles, including products of combustion;

(3) Operation of the specific type of combustor used by the operator, including proper startup, waste firing, and shutdown procedures;

(4) Combustion controls and continuous monitoring systems;

(5) Operation of air pollution control equipment and factors affecting performance;

(6) Inspection and maintenance of the combustor, continuous monitoring systems, and air pollution control devices;

(7) Actions to correct malfunctions or conditions that may lead to malfunction;

(8) Residue characteristics and handling procedures; and

(9) Applicable Federal, state, and local regulations, including Occupational Safety and Health Administration workplace standards; and

(B) An examination designed and administered by the instructor; and

(C) Written material covering the training course topics that may serve as reference material following completion of the course.

(vi) To maintain control room operator qualification under a site-specific, source developed and implemented training program as provided by paragraph (c)(6)(v) of this section, control room operators must complete an annual review or refresher course covering, at a minimum, the following topics:

(A) Update of regulations;

(B) Combustor operation, including startup and shutdown procedures, waste firing, and residue handling;

(C) Inspection and maintenance;

(D) Responses to malfunctions or conditions that may lead to malfunction; and

(E) Operating problems encountered by the operator.

(vii) You must record the operator training and certification program in the operating record.

(7) \* \* \*

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements.* (1) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligrams per actual cubic meter unless you demonstrate, pursuant to procedures in § 63.1209(a)(1), that a higher sensitivity would adequately detect bag leaks;

(2) The bag leak detection system shall provide output of relative particulate matter loadings;

(3) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(4) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(6) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50

percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(7) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(8) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified below. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(1) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(2) You must alleviate the cause of the alarm by taking the necessary corrective measure(s) which may include, but are not to be limited to, the following measures:

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media, or otherwise repairing the control device;

(iv) Sealing off a defective baghouse compartment;

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(vi) Shutting down the combustor.

7. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i).

b. Adding paragraph (c)(2)(iv).

c. Adding paragraph (e)(3).

d. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), (f)(1)(x) introductory text, and (f)(1)(xvii).

e. Adding paragraph (f)(1)(ii)(D).

f. Removing and reserving paragraph (f)(1)(xv).

- g. Revising paragraphs (g)(2)(i) and (g)(2)(ii).
- h. Adding paragraph (g)(2)(v).
- i. Revising paragraphs (h)(1) and (h)(2) introductory text.
- j. Revising paragraphs (j)(1)(ii) and (j)(3).
- k. Revising paragraphs (m)(4)(i) and (m)(4)(ii).

The revisions and additions read as follows:

**§ 63.1207 What are the performance testing requirements?**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* (i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Was initiated after 54 months prior to the compliance date, except as provided by paragraphs (c)(2)(iii) or (c)(2)(iv) of this section;

(B) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results demonstrate compliance with the applicable standards;

(C) Was in conformance with the requirements of paragraph (g)(1) of this section; and

(D) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

\* \* \* \* \*

(iv) The data in lieu test age restriction provided in paragraph (c)(2)(i)(A) of this section does not apply to DRE data provided you do not feed hazardous waste at a location in the combustion system other than the normal flame zone.

\* \* \* \* \*

(e) \* \* \*

(3) *Petitions for time extension if Administrator fails to approve or deny test plans.* You may petition the Administrator under § 63.7(h) to obtain a "waiver" of any performance test—initial or periodic performance test; comprehensive or confirmatory test. The "waiver" would be implemented as an extension of time to conduct the performance test at a later date.

(i) *Qualifications for the waiver.* (A) You may not petition the Administrator for a waiver under this section if the Administrator has issued a notification of intent to deny your test plan(s) under § 63.7(c)(3)(i)(B);

(B) You must submit a site-specific emissions testing plan and a continuous monitoring system performance evaluation test plan at least one year before a comprehensive performance test is scheduled to begin as required by paragraph (c)(1) of this section, or at

least 60 days before a confirmatory performance test is scheduled to begin as required by paragraph (d) of this section. The test plans must include all required documentation, including the substantive content requirements of paragraph (f) of this section and § 63.8(e); and

(C) You must make a good faith effort to accommodate the Administrator's comments on the test plans.

(ii) *Procedures for obtaining a waiver and duration of the waiver:* (A) You must submit to the Administrator a waiver petition or request to renew the petition under § 63.7(h) separately for each source at least 60 days prior to the scheduled date of the performance test;

(B) The Administrator will approve or deny the petition within 30 days of receipt and notify you promptly of the decision;

(C) The Administrator will not approve an individual waiver petition for a duration exceeding 6 months;

(D) The Administrator will include a sunset provision in the waiver ending the waiver within 6 months;

(E) You may submit a revised petition to renew the waiver under § 63.7(h)(3)(iii) at least 60 days prior to the end date of the most recently approved waiver petition;

(F) The Administrator may approve a revised petition for a total waiver period up to 12 months.

(iii) *Content of the waiver.* (A) You must provide documentation to enable the Administrator to determine that the source is meeting the relevant standard(s) on a continuous basis as required by § 63.7(h)(2). For extension requests for the initial comprehensive performance test, you must submit your Documentation of Compliance to assist the Administrator in making this determination.

(B) You must include in the petition information justifying your request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test, as required by § 63.7(h)(3)(iii).

(iv) *Public notice.* You must notify the public (e.g., distribute public mailing list) of your petition to waive a performance test.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air

pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

\* \* \* \* \*

(x) If you are requesting to extrapolate metal feedrate limits from comprehensive performance test levels under §§ 63.1209(l)(1)(i) or 63.1209(n)(2)(ii)(A):

\* \* \* \* \*

(xvii) If you propose to use a surrogate for measuring or monitoring gas flowrate, you must document in the comprehensive performance test plan that the surrogate adequately correlates with gas flowrate, as required by paragraph (m)(7) of this section, and § 63.1209(j)(2), (k)(3), (m)(2)(i), (n)(5)(i), and (o)(2)(i).

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the hourly rolling average values recorded (each minute) over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

(ii) Each operating limit (specified in § 63.1209) established to maintain



compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(iv) of this section. The average value is defined as the sum of the rolling average values recorded over the previous 12 months, divided by the number of rolling averages recorded during that time. The average value must not include calibration data, startup data, shutdown data, malfunction data, and data obtained when not burning hazardous waste;

(v) The Administrator may approve an alternative range to that required by paragraphs (g)(2)(i) and (ii) of this section if you document in the confirmatory performance test plan that it may be problematic to maintain the required range during the test. In addition, when making the finding of compliance, the Administrator may consider test conditions outside of the range specified in the test plan based on a finding that you could not reasonably maintain the range specified in the test plan and considering factors including whether the time duration and level of the parameter when operations were out of the specified range were such that operations during the confirmatory test are determined to be reasonably representative of normal operations. In addition, the Administrator will consider the proximity of the emission test results to the standard.

(h) \* \* \* (1) Current operating parameter limits established under § 63.1209 are waived during subsequent comprehensive performance testing.

(2) Current operating parameter limits are also waived during pretesting prior to comprehensive performance testing for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Administrator) under an approved test plan or if the source records the results of the pretesting. Pretesting means:

\* \* \* \* \*

- (j) \* \* \*
- (1) \* \* \*

(ii) Upon postmark of the Notification of Compliance, you must comply with all operating requirements specified in the Notification of Compliance in lieu of the limits specified in the Document of Compliance required under § 63.1211(c).

\* \* \* \* \*

(3) See §§ 63.7(g), 63.9(h), and 63.1210(b) for additional requirements pertaining to the Notification of

Compliance (e.g., you must include results of performance tests in the Notification of Compliance).

\* \* \* \* \*

- (m) \* \* \*
- (4) \* \* \*

(i) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatiles, low volatile metals, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(2)(iii) of this section is below the applicable emission standard; and

(ii) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(4)(i) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatiles, low volatile metals, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(4)(i) of this section.

\* \* \* \* \*

- 8. Section 63.1209 is amended by:
    - a. Revising paragraph (a)(1)(ii)(A).
    - b. Revising paragraphs (b)(2)(i) and (b)(5)(iii)(A).
    - c. Revising paragraph (f)(1).
    - d. Revising paragraphs (g)(1)(iii)(B)(1), (g)(1)(iii)(B)(2), (g)(1)(iii)(B)(3), (g)(1)(iii)(C)(1), and (g)(1)(iii)(C)(2).
    - e. Revising paragraphs (k)(5) and (k)(8)(ii).
    - f. Revising paragraphs (l)(1) introductory text, (l)(3), and (l)(4).
    - g. Revising paragraph (m)(3).
    - h. Revising paragraph (n)(4).
    - i. Revising paragraph (o)(1).
    - j. Revising paragraph (q).
- The revisions read as follows:

**§ 63.1209 What are the monitoring requirements?**

- (a) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*

(A) You must maintain and operate each COMS in accordance with the requirements of § 63.8(c) except for the requirements under § 63.8(c)(3). The requirements of § 63.1211(c) shall be complied with instead of § 63.8(c)(3); and

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(i) *Calibration of thermocouples and pyrometers.* The calibration of thermocouples must be verified at a frequency and in a manner consistent with manufacturer specifications, but no less frequent than once per year. You must operate and maintain optical pyrometers in accordance with

manufacturer specifications unless otherwise approved by the Administrator. You must calibrate optical pyrometers in accordance with the frequency and procedures recommended by the manufacturer, but no less frequent than once per year, unless otherwise approved by the Administrator. And,

\* \* \* \* \*

- (5) \* \* \*

(iii) \* \* \* (A) Except as provided by paragraph (b)(5)(iii)(B) of this section, you must continue monitoring operating parameter limits with a CMS when the hazardous waste feed is cutoff if the source is operating. You must not resume feeding hazardous waste if an operating parameter exceeds its limit.

\* \* \* \* \*

- (f) \* \* \*

(1) *Section 63.8(c)(3).* The requirements of § 63.1211(c), that requires CMSs to be installed, calibrated, and operational on the compliance date, shall be complied with instead of section 63.8(c)(3);

\* \* \* \* \*

- (g) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*
- (B) \* \* \*

(1) Data or information justifying your request for an alternative monitoring requirement (or for a waiver of an operating parameter limit), such as the technical or economic infeasibility or the impracticality of using the required approach;

(2) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach/technique (e.g., type of detector, monitoring location), the averaging period for the limit, and how the limit is to be calculated; and

(3) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard, or that it is the monitoring requirement that best assures compliance with the standard and that is technically and economically practicable.

- (C) \* \* \*

(1) Notice of the information and findings on which the intended disapproval is based; and

(2) Notice of opportunity for you to present additional information to the Administrator before final action on the request. At the time the Administrator notifies you of intention to disapprove the request, the Administrator will specify how much time you will have after being notified of the intended

disapproval to submit the additional information.

\* \* \* \* \*

(k) \* \* \*

(5) *Particulate matter operating limit.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits on the particulate matter control device as specified by paragraph (m)(1) of this section;

\* \* \* \* \*

(8) \* \* \*

(ii) *Maximum time in-use.* You must replace a catalytic oxidizer with a new catalytic oxidizer when it has reached the maximum service time specified by the manufacturer.

\* \* \* \* \*

(l) \* \* \*

(1) *Feedrate of total mercury.* You must establish a 12-hour rolling average limit for the total feedrate of mercury in all feedstreams as the average of the test run averages, unless mercury feedrate limits are extrapolated from performance test feedrate levels under the following provisions.

\* \* \* \* \*

(3) *Activated carbon injection.* If your combustor is equipped with an activated carbon injection system, you must establish operating parameter limits prescribed by paragraphs (k)(5) and (k)(6) of this section.

(4) *Activated carbon bed.* If your combustor is equipped with an activated carbon bed system, you must comply with the requirements of (k)(7) of this section to assure compliance with the mercury emission standard.

(m) \* \* \*

(3) *Maximum ash feedrate.* Owners and operators of hazardous waste incinerators must establish a maximum ash feedrate limit as the average of the test run averages.

(n) \* \* \*

(4) *Maximum total chlorine and chloride feedrate.* You must establish a 12-hour rolling average limit for the feedrate of total chlorine and chloride in all feedstreams as the average of the test run averages.

\* \* \* \* \*

(o) \* \* \*

(1) *Feedrate of total chlorine and chloride.* You must establish a 12-hour rolling average limit for the total feedrate of chlorine (organic and inorganic) in all feedstreams as the average of the test run averages.

\* \* \* \* \*

(q) *Operating under different modes of operation.* If you operate under different modes of operation, you must establish operating parameter limits for each mode. You must document in the operating record when you change a mode of operation and begin complying with the operating limits for an alternative mode of operation.

(1) *Operating under otherwise applicable standards after the hazardous waste residence time has transpired.* As provided by § 63.1206(b)(1)(ii), you may operate under otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act in lieu of the substantive requirements of this subpart.

(i) The otherwise applicable requirements promulgated under sections 112 and 129 of the Clean Air Act are applicable requirements under this subpart.

(ii) You must specify (e.g., by reference) the otherwise applicable requirements as a mode of operation in your Documentation of Compliance under § 63.1211(c), your Notification of Compliance under § 63.1207(j), and your title V permit application. These requirements include the otherwise applicable requirements governing emission standards, monitoring and

compliance, and notification, reporting, and recordkeeping.

(2) *Calculating rolling averages under different modes of operation.* When you transition to a different mode of operation, you must calculate rolling averages as follows:

(i) *Retrieval approach.* Calculate rolling averages anew using the continuous monitoring system values previously recorded for that mode of operation (i.e., you ignore continuous monitoring system values subsequently recorded under other modes of operation when you transition back to a mode of operation); or

(ii) *Start anew.* Calculate rolling averages anew without considering previous recordings.

(A) Rolling averages must be calculated as the average of the available one-minute values for the parameter until enough one-minute values are available to calculate hourly or 12-hour rolling averages, whichever is applicable to the parameter.

(B) You may not transition to a new mode of operation using this approach if the most recent operation in that mode resulted in an exceedance of an applicable emission standard measured with a CEMS or operating parameter limit prior to the hazardous waste residence time expiring; or

(iii) *Seamless transition.* Continue calculating rolling averages using data from the previous operating mode provided that both the operating limit and the averaging period for the parameter are the same for both modes of operation.

9. Section 63.1210 is amended by revising paragraph (a) to read as follows:

**§ 63.1210 What are the notification requirements?**

(a) *Summary of requirements.* (1) You must submit the following notifications to the Administrator:

Reference	Notification
63.9(b) .....	Initial notifications that you are subject to Subpart EEE of this Part.
63.9(d) .....	Notification that you are subject to special compliance requirements.
63.9(j) .....	Notification and documentation of any change in information already provided under § 63.9.
63.1206(b)(5)(i) .....	Notification of changes in design, operation, or maintenance.
63.1207(e), 63.9(e), 63.9(g)(1) and (3) .....	Notification of performance test and continuous monitoring system evaluation, including the performance test plan and CMS performance evaluation plan. <sup>1</sup>
63.1210(b), 63.1207(j), 63.1207(k), 63.1207(l), 63.9(h), 63.10(d)(2), 63.10(e)(2).	Notification of compliance, including results of performance tests and continuous monitoring system performance evaluations.

<sup>1</sup> You may also be required on a case-by-case basis to submit a feedstream analysis plan under § 63.1209(c)(3).

(2) You must submit the following notifications to the Administrator if you request or elect to comply with alternative requirements:

Reference	Notification, request, petition, or application
63.9(i) .....	You may request an adjustment to time periods or postmark deadlines for submittal and review of required information.

Reference	Notification, request, petition, or application
63.10(e)(3)(ii) .....	You may request to reduce the frequency of excess emissions and CMS performance reports.
63.10(f) .....	You may request to waive recordkeeping or reporting requirements.
63.1204(d)(2)(iii) .....	Notification that you elect to comply with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(iii) .....	Notification that you elect to comply with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(4), 63.1213, 63.6(i), 63.9(c) .....	You may request an extension of the compliance date for up to one year.
63.1206(b)(5)(i)(C) .....	You may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting after making a change in the design or operation that could affect compliance with emission standards and prior to submitting a revised Notification of Compliance.
63.1206(b)(8)(iii)(B) .....	If you elect to conduct particulate matter CEMS correlation testing and wish to have federal particulate matter and opacity standards and associated operating limits waived during the testing, you must notify the Administrator by submitting the correlation test plan for review and approval.
63.1206(b)(8)(v) .....	You may request approval to have the particulate matter and opacity standards and associated operating limits and conditions waived for more than 96 hours for a correlation test.
63.1206(b)(9) .....	Owners and operators of lightweight aggregate kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas under certain conditions.
63.1206(b)(10) .....	Owners and operators of cement kilns may request approval of alternative emission standards for mercury, semivolatile metal, low volatile metal, and hydrochloric acid/chlorine gas under certain conditions.
63.1206(b)(14) .....	Owners and operators of incinerators may elect to comply with an alternative to the particulate matter standard.
63.1206(b)(15) .....	Owners and operators of cement and lightweight aggregate kilns may request to comply with the alternative to the interim standards for mercury.
63.1206(c)(2)(ii)(C) .....	You may request to make changes to the startup, shutdown, and malfunction plan.
63.1206(c)(5)(i)(C) .....	You may request an alternative means of control to provide control of combustion system leaks.
63.1206(c)(5)(i)(D) .....	You may request other techniques to prevent fugitive emissions without use of instantaneous pressure limits.
63.1207(c)(2) .....	You may request to base initial compliance on data in lieu of a comprehensive performance test.
63.1207(d)(3) .....	You may request more than 60 days to complete a performance test if additional time is needed for reasons beyond your control.
63.1207(e)(3), 63.7(h) .....	You may request a time extension if the Administrator fails to approve or deny your test plan.
63.1207(h)(2) .....	You may request to waive current operating parameter limits during pretesting for more than 720 hours.
63.1207(f)(1)(ii)(D) .....	You may request a reduced hazardous waste feedstream analysis for organic hazardous air pollutants if the reduced analysis continues to be representative of organic hazardous air pollutants in your hazardous waste feedstreams.
63.1207(g)(2)(v) .....	You may request to operate under a wider operating range for a parameter during confirmatory performance testing.
63.1207(i) .....	You may request up to a one-year time extension for conducting a performance test (other than the initial comprehensive performance test) to consolidate testing with other state or federally-required testing.
63.1207(j)(4) .....	You may request more than 90 days to submit a Notification of Compliance after completing a performance test if additional time is needed for reasons beyond your control.
63.1207(l)(3) .....	After failure of a performance test, you may request to burn hazardous waste for more than 720 hours and for purposes other than testing or pretesting.
63.1209(a)(5), 63.8(f) .....	You may request: (A.) Approval of alternative monitoring methods for compliance with standards that are monitored with a CEMS; and (B.) approval to use a CEMS in lieu of operating parameter limits.
63.1209(g)(1) .....	You may request approval of: (A.) Alternative monitoring methods, except for standards that you must monitor with a continuous emission monitoring system (CEMS) and except for requests to use a CEMS in lieu of operating parameter limits; or (B.) a waiver of an operating parameter limit.
63.1209(l)(1) .....	You may request to extrapolate mercury feedrate limits.
63.1209(n)(2)(ii) .....	You may request to extrapolate semivolatile and low volatile metal feedrate limits.
63.1211(d) .....	You may request to use data compression techniques to record data on a less frequent basis than required by § 63.1209.

\* \* \* \* \*

10. Section 63.1211 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 63.1211 What are the recordkeeping and reporting requirements?**

(a) *Summary of reporting requirements.* You must submit the following reports to the Administrator:

Reference	Report
63.10(d)(4) .....	Compliance progress reports, if required as a condition of an extension of the compliance date granted under § 63.6(i).
63.10(d)(5)(i) .....	Periodic startup, shutdown, and malfunction reports.
63.10(d)(5)(ii) .....	Immediate startup, shutdown, and malfunction reports.
63.10(e)(3) .....	Excessive emissions and continuous monitoring system performance report and summary report.
63.1206(c)(2)(ii)(B) .....	Startup, shutdown, and malfunction plan.
63.1206(c)(3)(vi) .....	Excessive exceedances reports.
63.1206(c)(4)(iv) .....	Emergency safety vent opening reports.

(b) *Summary of recordkeeping requirements.* You must retain the following in the operating record:

Reference	Document, data, or information
63.1200, 63.10(b) and (c) .....	General. Information required to document and maintain compliance with the regulations of Subpart EEE, including data recorded by continuous monitoring systems (CMS), and copies of all notifications, reports, plans, and other documents submitted to the Administrator.
63.1204(d)(1)(ii) .....	Documentation of mode of operation changes for cement kilns with in-line raw mills.
63.1204(d)(2)(ii) .....	Documentation of compliance with the emission averaging requirements for cement kilns with in-line raw mills.
63.1204(e)(2)(ii) .....	Documentation of compliance with the emission averaging requirements for preheater or preheater/precalciner kilns with dual stacks.
63.1206(b)(1)(ii) .....	If you elect to comply with all applicable requirements and standards promulgated under authority of the Clean Air Act, including Sections 112 and 129, in lieu of the requirements of Subpart EEE when not burning hazardous waste, you must document in the operating record that you are in compliance with those requirements.
63.1206(b)(5)(ii) .....	Documentation that a change will not adversely affect compliance with the emission standards or operating requirements.
63.1206(b)(11) .....	Calculation of hazardous waste residence time.
63.1206(c)(2) .....	Startup, shutdown, and malfunction plan.
63.1206(c)(2)(v)(A) .....	Documentation of your investigation and evaluation of excessive exceedances during malfunctions.
63.1206(c)(3)(v) .....	Corrective measures for any automatic waste feed cutoff that results in an exceedance of an emission standard or operating parameter limit.
63.1206(c)(3)(vii) .....	Documentation and results of the automatic waste feed cutoff operability testing.
63.1206(c)(4)(ii) .....	Emergency safety vent operating plan.
63.1206(c)(4)(iii) .....	Corrective measures for any emergency safety vent opening.
63.1206(c)(5)(ii) .....	Method used for control of combustion system leaks.
63.1206(c)(6) .....	Operator training and certification program.
63.1206(c)(7)(i)(D) .....	Operation and maintenance plan.
63.1209(c)(2) .....	Feedstream analysis plan.
63.1209(k)(6)(iii), 63.1209(k)(7)(ii), 63.1209(k)(9)(ii), 63.1209(o)(4)(iii) .....	Documentation that a substitute activated carbon, dioxin/furan formation reaction inhibitor, or dry scrubber sorbent will provide the same level of control as the original material.
63.1209(k)(7)(i)(C) .....	Results of carbon bed performance monitoring.
63.1209(q) .....	Documentation of changes in modes of operation.
63.1211(c) .....	Documentation of compliance.

\* \* \* \* \*

11. Section 63.1213 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 63.1213 How can the compliance date be extended to install pollution prevention or waste minimization controls?**

(a) *Applicability.* You may request from the Administrator or State with an approved title V program an extension

of the compliance date of up to one year. \* \* \*

\* \* \* \* \*

12. Table 1 to Subpart EEE is amended to read as follows:

**TABLE 1 TO SUBPART EEE.—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE**

Reference	Applies to subpart EEE	Explanation
63.1 .....	Yes.	
63.2 .....	Yes.	
63.3 .....	Yes.	
63.4 .....	Yes..	
63.5 .....	Yes.	

TABLE 1 TO SUBPART EEE.—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE—Continued

Reference	Applies to subpart EEE	Explanation
63.6(a), (b), (c), (d), and (e).	Yes.	
63.6(f) .....	Yes .....	Except that the performance test requirements of Sec. 63.1207 apply instead of § 63.6(f)(2)(iii)(B).
63.6(g) and (h) .....	Yes.	
63.6(i) .....	Yes .....	Section 63.1213 specifies that the compliance date may also be extended for inability to install necessary emission control equipment by the compliance date because of implementation of pollution prevention or waste minimization controls.
63.6(j) .....	Yes.	
63.7(a) .....	Yes .....	Except § 63.1207(e)(3) allows you to petition the Administrator under § 63.7(h) to provide an extension of time to conduct a performance test.
63.7(b) .....	Yes .....	Except § 63.1207(e) requires you to submit the site-specific test plan for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(c) .....	Yes .....	Except § 63.1207(e) requires you to submit the site-specific test plan (including the quality assurance provisions under § 63.7(c)) for approval at least one year before the comprehensive performance test is scheduled to begin.
63.7(d) .....	Yes.	
63.7(e) .....	Yes .....	Except § 63.1207 prescribes operations during performance testing and § 63.1209 specifies operating limits that will be established during performance testing (such that testing is likely to be representative of the extreme range of normal performance).
63.7(f) .....	Yes.	
63.7(g) .....	Yes .....	Except § 63.1207(j) requiring that you submit the results of the performance test (and the notification of compliance) within 90 days of completing the test, unless the Administrator grants a time extension, applies instead of § 63.7(g)(1).
63.7(h) .....	Yes .....	Except § 63.1207(c)(2) allows data in lieu of the initial comprehensive performance test, and § 63.1207(m) provides a waiver of certain performance tests. You must submit requests for these waivers with the site-specific test plan.
63.8(a) and (b) .....	Yes.	
63.8(c) .....	Yes .....	Except: (1) § 63.1211(c) that requires you to install, calibrate, and operate CMS by the compliance date applies instead of § 63.8(c)(3); and (2) the performance specifications for CO, HC, and O <sub>2</sub> CEMS in subpart B, of this chapter requiring that the detectors measure the sample concentration at least once every 15 seconds for calculating an average emission level once every 60 seconds apply instead of § 63.8(c)(4)(ii).
63.8(d) .....	Yes.	
63.8(e) .....	Yes .....	Except § 63.1207(e) requiring you to submit the site-specific comprehensive performance test plan and the CMS performance evaluation test plan for approval at least one year prior to the planned test date applies instead of §§ 63.8(e)(2) and (3)(iii).
63.8(f) and (g) .....	Yes.	
63.9(a) .....	Yes.	
63.9(b) .....	Yes .....	<i>Note:</i> Section 63.9(b)(1)(ii) pertains to notification requirements for area sources that become a major source, and § 63.9(b)(2)(v) requires a major source determination. Although area sources are subject to all provisions of this subpart (Subpart EEE), these sections nonetheless apply because the major source determination may affect the applicability of part 63 standards or title V permit requirements to other sources (i.e., other than a hazardous waste combustor) of hazardous air pollutants at the facility.
63.9(c) and (d) .....	Yes.	
63.9(e) .....	Yes .....	Except § 63.1207(e) which requires you to submit the comprehensive performance test plan for approval one year prior to the planned performance test date applies instead of § 63.9(e).
63.9(f) .....	Yes .....	Section 63.9(f) applies if you are allowed under § 63.1209(a)(1)(v) to use visible determination of opacity for compliance in lieu of a COMS.
63.9(g) .....	Yes .....	Except § 63.9(g)(2) pertaining to COMS does not apply.
63.9(h) .....	Yes .....	Except § 63.1207(j) requiring you to submit the notification of compliance within 90 days of completing a performance test unless the Administrator grants a time extension applies instead of § 63.9(h)(2)(iii). <i>Note:</i> Even though area sources are subject to this subpart, the major source determination required by § 63.9(h)(2)(i)(E) is applicable to hazardous waste combustors for the reasons discussed above.
63.9(i) and (j) .....	Yes.	
63.10 .....	Yes .....	Except reports of performance test results required under § 63.10(d)(2) may be submitted up to 90 days after completion of the test.
63.11 .....	No.	
63.12–63.15 .....	Yes.	

**PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES**

1. The authority citation for part 266 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3004, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

2. Section 266.100 is amended by:

- a. Revising the first sentence of paragraph (a).
- b. Revising the first sentence of paragraph (b)(1).
- c. Revising paragraphs (d)(1)(i)(B), (d)(2)(i), (d)(2)(ii), (d)(3) introductory text, (d)(3)(i) introductory text, and (d)(3)(i)(D).

The revisions read as follows:

**§ 266.100 Applicability.**

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), (g), and (h) of this section. \* \* \*

(b) \* \* \* (1) Except as provided by paragraph (b)(2) of this section, the standards of this part no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(b) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) The hazardous waste is burned solely for metal recovery consistent with the provisions of paragraph (d)(2) of this section;

\* \* \* \* \*

(2) \* \* \*

(i) The hazardous waste has a total concentration of organic compounds listed in part 261, appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section; or

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by *bona fide* treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph (d)(1)(iii) of this section.

(3) To be exempt from §§ 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Director identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (d)(1) of this section. The owners or operator must comply with the requirements of paragraph (d)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph (d)(3).

(i) The hazardous wastes listed in appendices XI, XII, and XIII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (d)(1) of this section, provided that:

\* \* \* \* \*

(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of paragraph (d)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph (d)(1)(ii) of this section and records to document compliance with paragraph (d)(3) of this section shall be kept for at least three years.

\* \* \* \* \*

**PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

1. The authority citation for part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.42 is amended by revising paragraph (j)(1) to read as follows:

**§ 270.42 Permit modifications at the request of the permittee.**

\* \* \* \* \*

(j) \* \* \*

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000, (See 40 CFR Part 63 Revised as of July 1, 2000) in order to request a permit modification under this section.

\* \* \* \* \*

[FR Doc. 02-3373 Filed 2-13-02; 8:45 am]

BILLING CODE 6560-50-P