normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Particulate Matter, Reporting and recordkeeping requirements.

Dated: May 24, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–12659 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0058; FRL–7928–7]

RIN 2060–AM97

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule; request for public comment.

SUMMARY: The EPA is requesting comment on certain aspects of our national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters, which EPA promulgated on September 13, 2004.

After promulgation of the final regulations for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. In this document, the EPA is initiating the reconsideration of some of those provisions. We are requesting comment on certain provisions of the approach used to demonstrate eligibility for the health-based compliance alternatives, as outlined in appendix A of the final rule, and on the provisions establishing a health-based compliance alternative for total selected metals. We are not requesting comment on any other provisions of the final rule. We are not granting petitioners' request that we stay the effectiveness of the health-based compliance provisions of the final rule, pending this reconsideration action.

DATES: *Comments.* Comments must be received on or before August 11, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by July 7, 2005, a public hearing will be held on July 12, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2002–0058 (Legacy Docket ID No. A–96–47). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held on July 12, 2005 at the EPA facility, Research Triangle Park, N.C. or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (*see* **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this document.

Docket. The EPA has established an official public docket for today's document, including both Docket ID No. OAR–2002–0058 and Legacy Docket ID No. A–96–47. The official public docket consists of the documents specifically referenced in today's document, any public comments received, and other information related to the document. All items may not be listed under both

docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's document. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

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

SUPPLEMENTARY INFORMATION:

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

I. General Information

A. Does This Reconsideration Notice Apply to Me?

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

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

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

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

B. How Do I Submit CBI?

Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. How Do I Obtain a Copy of This Document and Other Related Information?

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

II. Background

On September 13, 2004 (69 FR 55218), we promulgated NESHAP for sources in the industrial, commercial, and institutional boilers and process heaters category pursuant to section 112 of the Clean Air Act (CAA). Under section 112(d) of the CAA, the NESHAP must

reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as maximum achievable control technology (MACT). However, section 112(d)(4) of the CAA also states that ''[w]ith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emissions standards under this subjection.''

We proposed standards for industrial, commercial, and institutional boilers and process heaters on January 13, 2003 (68 FR 16660). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We requested comment on incorporating various risk-based approaches (based on section 112(d)(4) and other provisions of the CAA) into the final rule to reduce the cost of regulatory controls on those facilities that pose little risk to public health and the environment. (See 68 FR 1688–1693.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the proposed risk-based approaches. We received a total of 218 public comment letters on the proposed rule during the comment period. We summarized major public comments on the proposed risk-based approaches, along with our responses to those comments, in the preamble to the final rule (see 69 FR 55239–55244) and in the comment response memorandum, ''Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised) (RTC Memorandum) that was placed in the docket for the final rule.

In the final rule, we adopted health-based compliance alternatives for hydrogen chloride (HCl) and manganese based on our authority under sections 112(d)(4) of the CAA. Affected sources demonstrating that they are eligible for one or both of the health-based compliance alternatives are not required to demonstrate compliance with specific emissions limits in table 1 to the final rule. Affected sources that successfully demonstrate that they are eligible for the HCl health-based compliance alternatives are not subject to the MACT HCl emission limit but are still subject to operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63). With respect to manganese, affected sources that demonstrate eligibility for the health-based compliance alternative for total selected metals (TSM) are still subject to the MACT TSM emission limit and operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63) except that they may demonstrate compliance with the TSM emission limit based on the sum of emissions for seven metals, instead of the eight selected metals, by excluding manganese emissions.

The methodology and criteria for affected sources to use in demonstrating eligibility for the health-based compliance alternatives were promulgated in appendix A to subpart DDDDD of 40 CFR part 63. (See 69 FR 55282–55286.) Appendix A specifies the process units and pollutants that must be included in the eligibility demonstration, the emissions testing methods, the criteria for determining if an affected source is eligible, the risk assessment methodology (look-up table analysis or site-specific risk analysis), the contents of the eligibility demonstration, the schedule for submission of the self-certified eligibility demonstrations, and the methods for ensuring that an affected source remains eligible.

For an affected source to be eligible for the health-based compliance alternatives, it must submit a signed certification that the demonstration is an accurate depiction of the affected facility. Thereafter, it must have federally enforceable conditions reflecting the parameters used in the eligibility demonstration incorporated into its title V permit to ensure that it remains eligible.

Following promulgation of the final rule, the Administrator received petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from the Natural Resources Defense Council (NRDC), Environmental Integrity Project (EIP), and General Electric (GE).[1] Under this provision, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

NRDC and EIP initially requested that EPA reconsider seven issues reflected in the final rule that they believe could not have been practicably addressed during the public comment period. EIP also filed a supplement to this petition which raised additional issues for reconsideration. Together, NRDC and EIP have requested reconsideration of the following issues: (1) The adoption of ''no control'' MACT floors for certain subcategories and pollutants; (2) establishing risk-based alternatives on a plant-by-plant basis; (3) the presence of health thresholds for HCl and manganese; (4) consideration of background pollution and co-located emission sources; (5) establishing a health-based compliance alternative for a pollutant (HCl) that serves as a surrogate for other inorganic pollutants; (6) promulgating a health-based compliance alternative that allows low-risk sources of manganese emissions to comply with the MACT limitations for metals without counting manganese; (7) the procedures for demonstrating compliance with the health-based alternatives; (8) consideration of emissions during periods of startup, shutdown, malfunction and (9) the cost-effectiveness of the health-based alternatives. The NRDC and EIP petition also requested that EPA stay the effectiveness of the health-based compliance alternatives pending reconsideration.

By letters dated January 28, 2005, we informed NRDC and EIP that we intended to grant their joint petition for reconsideration. We indicated in those letters that we would respond to the petitions by publishing this document.

III. Today's Action

A. Grant of Reconsideration

Today, we are granting reconsideration of several of the issues raised in the NRDC and EIP petition for reconsideration. As a result, we are requesting comment on certain provisions in appendix A of subpart DDDDD of 40 part 63 and the health-based compliance alternative for total selected metals reflected in § 63.7507(b) of the final rule. We are continuing to review the issue raised by GE with respect to the emissions averaging provision of the final rule and are not

[1] In addition to the petitions for reconsideration, two petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC, Sierra Club, and EIP (No. 04–1385, D.C. Cir.) and American Municipal Power—Ohio and the Ohio cities of Dover, Hamilton, Orrville, Painesville, Shelby, and St. Marys (No. 04–1386, D.C. Cir.). The two cases have been consolidated. Eleven additional parties have filed petitions to intervene: American Home Furnishings Alliance, Council of Industrial Boiler Owners, American Forest and Paper Association, American Chemistry Council, National Petrochemical and Refiners Association, American Petroleum Institute, National Oilseed Processors Association, Coke Oven Environmental Task Force, Utility Air Regulatory Group, and Alliance of Automobile Manufacturers are intervening with regard to the health-based compliance alternatives.

taking action on that petition at this time.[2]

Nearly all of the issues on which NRDC and EIP request reconsideration relate to the health-based compliance alternatives adopted in the final rule. Although we believe these aspects of the final rule are properly supported and justified, we recognize that the public may not have had the opportunity to comment on each of the implementation requirements for these alternatives that are reflected in the final rule because they were not completely developed by EPA at the time of the proposed rule. Section IV discusses the issues for which we are soliciting comment, including the methodology and criteria for demonstrating eligibility for the health-based compliance alternatives, the tiered risk assessment approach, look-up tables, site-specific risk assessment, background concentrations and emissions from other sources, submission deadlines, and the health-based compliance alternative for metals.

We are not reconsidering the remaining issues raised by NRDC and EIP because we believe we provided clear notice and a full opportunity to comment on these aspects of the final rule. We proposed ''no emissions control'' floors in our January 2003 action and received comments on this issue. (See 68 FR 1672–1678; 69 FR 55233; RTC Memorandum at 78–79.) We also proposed to establish plant-by-plant health-based alternatives under the authority of section 112(d)(4) of the CAA and thoroughly explained why this action is legally permissible in response to comments on this issue (69 FR 55239–44). (See also RTC Memorandum at 185–269.) Likewise, we proposed health-based compliance alternatives for HCl and proposed using HCl as a surrogate to regulate other inorganic pollutants. (See 68 FR 1671, 1692.) We received and responded to comments raising concerns about combining these two concepts in the rule, as proposed, and addressed this issue when we developed appendix A to subpart DDDDD. (See 69 FR 55243–55244.) We identified the Integrated Risk Information System (IRIS) reference concentrations for HCl and manganese in the notice of proposed rulemaking (68 FR 1690). These values were established through a process conducted by EPA's Office of Research and Development in which there was opportunity for public participation (*e.g.*, 58 FR 11490 (February 25, 1993). The IRIS process is a rigorous scientific process which includes internal peer review, external scientific peer review combined with public notice, and often includes outside peer consultation to support the development of dose-response knowledge.

Commenters also had an opportunity to address our treatment of emissions during periods of startup, shutdown, and malfunction and the cost-effectiveness of the proposed rule. We received and responded to several comments regarding startup, shutdown, and malfunction plans. (See RTC at 144–155 (section 12)). We assessed the costs and benefits of the final rule in the preamble to the final rule (69 FR 55245–55247) and the supporting documentation ''Regulatory Impact Analysis for the Final Industrial, Commercial, and Institutional Boilers and Process Heaters MACT'' that was included in the docket.

B. Request for Stay of Health-Based Alternatives

We are not granting the request by NRDC and EIP for a stay of the health-based compliance alternatives. Under section 307(b)(1) and 307(d)(7)(B) of the CAA, the effectiveness of our final rules is not automatically postponed by our granting of a petition for reconsideration on certain issues. However, the Administrator has the discretion to stay such rules pending reconsideration for a period not to exceed 3 months.

We do not believe it is necessary in this instance to stay the health-based compliance alternatives. Although we have decided to reconsider certain aspects concerning the implementation of these alternatives, we do not have reason to believe that approaches reflected in these provisions are erroneous. We regard these aspects of the final rule as a reasonable exercise of our discretion and authority under the CAA that will reduce compliance costs for sources.

The public health is not endangered by the continued effectiveness of the health-based compliance alternatives during the reconsideration process. A facility cannot invoke this alternative compliance option unless it demonstrates to the appropriate permitting authority that its emissions exhibit characteristics that EPA believes do not pose significant risk to the surrounding population. In addition, the compliance date for existing sources is in 2007, so the health-based compliance alternatives will not be applied to such sources immediately.

Finally, we intend to complete our reconsideration of the final rule expeditiously. Any uncertainty that may be created by our partial granting of these petitions for reconsideration will be short-lived.

Thus, at this time we do not propose to change the compliance date for the final rule or the date for submittal of health-based eligibility demonstrations. However, we request comment on whether, in light of the time required to complete this reconsideration action, we should adjust the timetable for submission of these eligibility determinations.

IV. Discussion of Issues Subject to Reconsideration

Stakeholders who would like for us to reconsider comments relevant to those issues that they submitted to us previously should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process. We plan to take final action on today's reconsideration as expeditiously as possible.

A. Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

In the final rule, we established emissions limitations for particulate matter (PM), TSM, HCl, mercury, and carbon monoxide based on MACT. These limitations are set forth in table 1 to subpart DDDDD. In addition, based on section 112(d)(4) of the CAA, we also established health-based compliance alternatives to the HCl and TSM emissions limitations, which are set forth in § 63.7507 of subpart DDDDD. Under these alternatives, an affected source that qualifies may demonstrate compliance with a health-based HCl equivalent allowable emission limit instead of the emissions limitation for HCl set forth in table 1. For TSM, an affected source that qualifies may demonstrate compliance with the emission standard for TSM in the final rule based on the sum of emissions for the seven selected metals, excluding manganese emissions from the summation of TSM emissions for the affected source.

In our notice of proposed rulemaking, we described approaches that we might use to implement an applicability cutoff for threshold pollutants based on section 112(d)(4) of the CAA. (See 68 FR 1689–1692.) We discussed establishing the applicability cutoffs using a target organ specific HI, which is the sum of the individual hazard quotients (HQ) for pollutants that affect the same target organ or system. A HQ is the ratio of the level of exposure for a single substance over a specified time period to a reference level (*e.g.*, EPA's reference

[2] GE requested reconsideration of the emissions averaging provisions of the final rule to address how this provision might apply in the context of emissions units that vent to a single stack.

concentration, or RfC) for that substance derived for a similar exposure period. The RfC is an estimate of a continuous inhalation exposure or a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. (See 69 FR 1689.) In addition, we discussed the possibility of developing a series of simple look-up tables that a facility could use to determine whether emissions from a source might cause a hazard index limit to be exceeded. (See 69 FR 1691.) In addition, we also discussed the possibility that a facility that did not pass the look-up table analysis might be able to demonstrate that the facility does not exceed the HI limit by conducting a more site-specific and resource-intensive analysis using EPA-approved modeling procedures. (See 69 FR 1691.)

In the final rule, we established procedures for demonstrating eligibility for the health-based compliance alternatives and codified them in appendix A of subpart DDDDD. These procedures are summarized in the preamble to the final rule (69 FR 55227–55228). The preamble to the final rule also contained a summary of our response to significant comments. (See 69 FR 55239–55244.)

We are requesting comment on specific aspects of the methodology reflected in appendix A, as discussed in more detail in the following sections.

B. Tiered Risk Assessment Methodology

As noted above, appendix A to subpart DDDDD employs a tiered analytical approach to determine whether a facility is eligible for the health-based compliance alternatives. We explained in our notice of proposed rulemaking that a tiered analysis involves making successive refinements in modeling methodologies and input data such that increasing levels of refinement require more site-specific data and are, therefore, less likely to overestimate risks. (See 68 FR 1691.)

Additionally, in our notice of proposed rulemaking, we indicated that EPA guidance could provide the basis for conducting a tiered analysis. (See 68 FR 1691.) Such guidance may be found in the document ''A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants,'' EPA–450/4–92–001 that we referenced in a footnote. Although it was clearly referenced in the proposal, we inadvertently failed to place this document in the docket for the proposed rulemaking. It is now in the docket.

Appendix A describes a tiered approach where sources can utilize the health-based alternative compliance options by performing either a look-up table analysis or a more detailed site-specific analysis. Thus, a source would start with a modeling strategy that requires very little site-specific data and makes health-protective assumptions (*e.g.* look-up tables). At more refined tiers, the assessment becomes more realistic (*e.g.* less likely to overestimate risks) but it requires more site-specific data and possibly more sophisticated models. Thus, higher tier assessments result in a more realistic assessment of risk but require more data and are more labor intensive to conduct.

In the implementation of this approach in the final rule, we did two things: (1) We created look-up tables specific to this source category, eliminating the need to use the generic look-up table in the proposed reference, and (2) we referred the user requiring more refined tiers of analysis to our recently published Air Toxics Risk Assessment Reference Library, Volume 2, Facility-specific Assessment, a document which builds off the earlier EPA guidance document (the one referenced in the proposal), implementing the tiered approach in the context of a facility-specific risk assessment for air toxics. Both of these documents endorse the assessment of air toxics risks using a tiered, iterative approach, and that has been the preferred approach ever since it was endorsed by the National Academy of Sciences in their report, ''Science and Judgment in Risk Assessment,'' NRC press, 1994.

In response to the concerns expressed by the petitioners, we have entered the document ''A Tiered Modeling Approach for Assessing the Risks Due to Sources of Hazardous Air Pollutants'' into the docket for public review. We request comment on the use of a tiered analysis in appendix A and the application in this case of the principles set forth in the aforementioned document.

C. Look-Up Tables

In the notice of proposed rulemaking, for the first tier of a risk assessment analysis for threshold pollutants, we proposed to develop a series of simple look-up tables based on the results of air dispersion modeling using conservative input assumptions. We proposed to create tables using a limited number of parameters (such as stack height, distance to property line, and emissions rate) that could be used to easily determine whether emissions from a source might cause a HI limit to be exceeded. (See 68 FR 1691.)

In the final rule, we promulgated specific look-up tables for HC1 and manganese that provide allowable emissions rate values for several combinations of stack heights and distances to a property boundary. (See 69 FR 55286.) A source is eligible for the compliance alternatives if its calculated emission rate does not exceed the appropriate value in the look-up table.

We developed the look-up tables for hydrogen chloride and manganese in appendix A to subpart DDDDD using the health-protective SCREEN3 air dispersion model. A description of the method we used to develop the look-up tables is set forth in a memorandum in the docket entitled ''Development of Central Nervous System and Respiratory System Look-up Tables for Industrial Boilers.'' We ran dispersion models using health-protective assumptions that we believe are appropriate for a screening analysis such as the one set forth in appendix A to subpart DDDDD.

The look-up table for HCl was developed based on an evaluation of not just HCl, but all acid gas and respiratory HAP. Likewise, the look-up table for manganese was developed based on an assessment of not just manganese emissions, but all central nervous system HAP emissions.

We used average stack height because, based on available stack height information for several facilities, we found that the stacks heights of multiple solid fuel units at a given facility are generally similar. In light of this finding and health-protective assumptions built into the look-up tables, we believe that using average stack height will not understate the risks posed by each source.

We request comment on the look-up tables and the methodology used to develop them. This includes our use of average stack heights, the derivation of different look-up table values based on distance from the property line, and the use of conservative assumptions to account for other variables such as meteorology.

D. Site-Specific Risk Assessment

If a facility cannot show eligibility for a compliance alternative based on the look-up table, it may conduct a more refined site-specific risk assessment in accordance with section 7 of appendix A to subpart DDDDD. (See 69 FR 55283.) Under this approach, a facility must use any scientifically-defensible, transparent and peer-reviewed assessment methodology to determine risk from the facility. The facility is eligible for the alternative compliance

option if the site-specific risk assessment shows that the maximum HI (or HQ) from the affected sources at the facility is less than or equal to 1.0.

An example of site-specific modeling performed in accordance with the principles set forth in appendix A to subpart DDDDD is described in the EPA ''Air Toxics Risk Assessment Reference Library'' which is referenced in section 7 of appendix A. The library includes examples of how to estimate inhalation exposures and other parameters.

Our approach in appendix A to subpart DDDDD is based on the general air toxics risk assessment approach presented in EPA's Residual Risk Report to Congress (available at *http://www.epa.gov/ttn/oarpg/t3/reports/risk_rep.pdf*). The Air Toxics Risk Assessment Reference Library has been peer-reviewed and was developed according to the principles, tools and methods outline in the Residual Risk Report to Congress.

For accuracy, a facility is required to use site-specific and quality-assured data whenever possible. Selection of site-specific input parameters is the essence of this site-specific demonstration. As a result, section 7(c)(5) of appendix A to subpart DDDDD requires adequate documentation for all inputs and assumptions.

We request comment on the approach for conducting a site-specific risk assessment and the criteria set forth in section 7 of appendix A to subpart DDDDD.

E. Background Concentrations and Emissions From Other Sources

In our notice of proposed rulemaking, we discussed using a HI to identify the applicability cutoff for a standard for threshold pollutants based on section 112(d)(4) of the CAA. (See 68 FR 1689–1691.) One option that we discussed was using a HI of 1.0. (See 68 FR 1691.) A second option that we discussed was using a HI of less than 1.0, such as 0.2, which would reflect an assumption that 20 percent of individual's total exposure comes from a particular source, and that 80 percent of the exposure would result from background concentrations of pollutants resulting from other sources. We also discussed the option of using available data from scientific literature to determine a background concentration. (See 68 FR 1691.)

In the final rule, we decided to employ a HI or HQ of 1.0 as the applicability cutoff for the assessments performed via appendix A to subpart DDDDD. The look-up tables included in appendix A were developed based on an HI of 1.0 for HCl and chlorine, and an HQ of 1.0 for manganese. For a site-specific compliance demonstration under section 7 of appendix A, a source must demonstrate that the subpart DDDDD, 40 CFR part 63, units at the facility are not expected to cause an individual chronic inhalation exposure from HCl and chlorine that exceeds an HI of 1.0 or an individual chronic inhalation exposure from manganese which could exceed an HQ of 1.0.

We concluded that an HI (or HQ) limit of 1.0 was appropriate for the CAA section 112(d)(4) demonstration for the boiler and process heater source category because the RfCs that are used to calculate the HI and HQ are developed to protect sensitive subgroups and to account for scientific uncertainties. We believe this ensures that a HI limit of 1.0 provides an ample margin of safety. (See RTC Memorandum at 253.)

Additionally, we decided not to consider the impact of non-boiler-related background emissions in the implementation of the health-based compliance alternatives for HCl and manganese, indicating instead our intent to assess facility-wide emissions of HAP in future residual risk actions under section 112(f)(2) of the CAA, to the extent it is appropriate and reasonable to do so. (See RTC Memorandum at 253.)

Although we indicated that one option for addressing background emissions was to utilize an HI of 0.2, we did not intend to suggest that this was the only reasonable approach for addressing the potential risk from background emissions. After evaluating comments on this issue, we are satisfied that an HI or HQ of 1.0 is appropriate.

To ensure that we receive input from members of the public that wish to be heard, we are requesting comment on our approach. We also request comment on deferring any further consideration of background and co-located sources until we assess facility-wide emissions of HAP in future residual risk actions under section 112(f)(2) of the Clean Air Act.

F. Health-Based Compliance Alternative for Metals

The final regulations in subpart DDDDD include a health-based compliance alternative for TSM in § 63.7507(b). Applicability for this alternative is determined on the basis of the levels of emissions of manganese from affected sources, in accordance with appendix A to subpart DDDDD. A source that demonstrates eligibility for this health-based alternative is permitted to exclude manganese from its calculation of TSM to show compliance with the emissions limitations in table 1 to subpart DDDDD. Thus, under the health-based alternative for TSM, the source is in compliance with subpart DDDDD of 40 CFR part 63 if the total emissions of seven metals (rather than eight) meet the emissions limitations for TSM in table 1 to subpart DDDDD.

In the notice of proposed rulemaking (68 FR 1689), we proposed to establish an applicability cutoff for threshold pollutants under section 112(d)(4) of the CAA. We listed dose-response assessment values for the HAP emitted by the boiler and process heater source category. (See 68 FR 1690, table 4.) The table listing these values included the reference concentrations for several pollutants, including manganese.

Although we specifically proposed in the preamble to the notice of proposed rulemaking to establish an applicability cutoff for HCl under section 112(d)(4) of the CAA, we intended to request comment on using this approach for all threshold pollutants. Indeed, we received several comments that addressed additional pollutants besides HCl, including manganese. (See RTC Memorandum and Docket ID No. OAR–2002–0058.) Based on these comments and our analysis, we concluded in the final rule that it was appropriate to include a health-based compliance alternative for manganese as well. Because manganese is one of the HAP metals emitted by sources in the boilers and process heaters category, we promulgated a health-based alternative emissions limitations for TSM.

To establish the health-based alternative emissions limitations for TSM, we performed the same MACT floor analysis as was conducted, and described in the proposal preamble, for the proposed TSM emission limit. This approach is described in the memorandum ''Revised MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants Based on Public Comments'' and appendix C–2 to that memorandum, which is contained in the docket.

We request comment on both the appropriateness of adopting a health-based compliance alternative for manganese and, under this alternative, using the same TSM emission limit in table 1 to subpart DDDDD as a limitation for seven metals, while excluding manganese from the calculation.

G. Deadline for Submission of Health-Based Applicability Determinations.

Under section 9(a) of appendix A to subpart DDDDD, existing sources must submit their eligibility demonstration to

a permitting authority no later than the date 1 year prior to the compliance date of subpart DDDDD. Pursuant to § 63.7495(b) of the subpart DDDDD, the compliance date for existing sources is September 13, 2007. Thus, existing sources must submit their compliance demonstrations under appendix A by September 13, 2006.

Several representatives of the regulated industry have expressed concern that EPA's reconsideration of certain aspects of appendix A to subpart DDDDD will make it difficult to make the eligibility demonstration by September 13, 2006. These parties are concerned that the uncertainty created by this reconsideration action will make it difficult to complete an eligibility demonstration by September 13, 2006.

EPA does not believe that this reconsideration action makes it necessary to provide regulated sources with more time to prepare their eligibility demonstrations. Sources should proceed to prepare their eligibility demonstrations under the existing process promulgated in the final rule. We believe that the existing process in appendix A is supported by the record, and do not at this time have reason to believe changes will be necessary.

To the extent we determine, based on comments submitted in response to this action, that changes are needed to appendix A to subpart DDDDD, we will evaluate whether, based on the significance of any change, additional time is needed.

However, we will also need to consider the competing considerations which lead us to establish this date 1 year before the compliance date in the first instance. We believe 1 year is necessary in order to provide permitting authorities with enough time to evaluate the eligibility demonstrations and sources with enough time to comply with the MACT emissions limitations, if their eligibility demonstration is not accepted.

Based on section 112(i)(3)(A) of the CAA, which states that EPA cannot establish a compliance date later than 3 years after the effective date of the final rule, we do not believe we are authorized to extend the compliance date for existing sources beyond September 13, 2007. However, under section 112(i)(3)(B) of the CAA, permitting authorities may be authorized to grant up to 1 additional year to comply where a source can demonstrate that such time is necessary for the installation of controls.

Thus, we do not believe it is appropriate at this time to propose any adjustment to the deadline for submitting eligibility demonstrations. However, because of the concern over this timing, we request comment on whether we should or should not extend the deadline for submission of eligibility demonstrations in light of this reconsideration action.

H. What Are the Proposed Corrections to the Health-based Compliance Alternatives?

We made an error in § 63.7507(a) and the title of appendix A to subpart DDDDD that has caused confusion regarding the intended applicability of the health-based compliance alternative. As indicated in § 63.7507(b) and the text of appendix A, the health-based compliance alternatives, both for HCl and TSM, were intended to be applicable to any affected source subject to the HCl and TSM emission limits in table 1 to subpart DDDDD. In § 63.7507(a) and in the title of appendix A, we erroneously stated that the health-based compliance alternatives were only for the large solid fuel subcategory. Large solid fuel units are the main subcategory potentially affected by the health-based compliance alternatives but they are not the only subcategory having applicable HCl and TSM emission limits. We corrected that error by deleting the words ''for large solid fuel boilers located at a single facility'' from § 63.7507(a) and deleted the words ''Specified for the Large Solid Fuel Subcategory'' from the title of appendix A.

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

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today's notice of reconsideration is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

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

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

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's notice of reconsideration on small entities, a small entity is defined as: (1) A small business having no more 500 to 750 employees, depending on the business' NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's notice of reconsideration on small entities, we certify that the notice will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the notice of reconsideration imposes no additional regulatory requirements on owners or operators of affected sources.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although the final rule had annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), today's notice of reconsideration does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice of reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's notice will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

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

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned

rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's notice of reconsideration is not subject to the Executive Order because EPA does not have reason to believe that the environmental health or safety risks associated with the emissions addressed by this document present a disproportionate risk to children. This demonstration is based on the fact that the noncancer human health values we used in our analysis at promulgation (*e.g.*, reference concentrations) are determined to be protective of sensitive subpopulations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by facilities that meet the eligibility criteria for the health-based compliance alternatives will be sufficiently low so as not to be a concern for anyone in the population, including children.

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

Today's notice of reconsideration is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that today's notice of reconsideration is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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

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

Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this document.

List of Subjects in 40 CFR Part 63

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

Dated: June 20, 2005.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart DDDDD—[Amended]

2. Section 63.7507 is amended by revising paragraph (a) to read as follows:

§ 63.7507 What are the health-based compliance alternatives for the hydrogen chloride (HCl) and total selected metals (TSM) standards?

(a) As an alternative to the requirement to demonstrate compliance with the HCl emission limit in table 1 to this subpart, you may demonstrate eligibility for the health-based compliance alternative for HCl emissions under the procedures prescribed in appendix A to this subpart.

* * * * *

3. Appendix A to subpart DDDDD is amended by revising the heading to read as follows:

Appendix A to Subpart DDDDD—Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

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