

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

#### *Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 21, 2005.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 05-15058 Filed 7-28-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[OAR-2003-0048; FRL-7943-1]

RIN 2060-AN05

#### National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Reconsideration

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

**ACTION:** Notice of reconsideration of final rule; request for public comment; notice of public hearing.

**SUMMARY:** On July 30, 2004, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for the plywood and composite wood products (PCWP) source category. The Administrator subsequently received a petition for reconsideration of certain provisions in the final rule. By a letter dated December 6, 2004, the Assistant Administrator for Air and Radiation granted the petition for reconsideration, explaining that we would publish a notice in the **Federal Register** to respond to the petition. We are issuing that notice and requesting comment on the approach used to delist a low-risk subcategory of PCWP affected sources, as outlined in the final rule, and on an

issue related to the final rule's start-up, shutdown, and malfunction (SSM) provisions. We are not requesting comments on any other provisions of the final PCWP rule or any other rule. The petitioners also requested that we stay the effectiveness of the risk-based provisions of the final rule, pending reconsideration of those provisions. As stated in the December 6, 2004 letter, we are declining to take that action at the present time.

**DATES:** *Comments.* Comments must be received on or before September 12, 2005.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by August 8, 2005, a public hearing will be held on August 15, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. OAR-2003-0048 (Legacy Docket ID No. A-98-44) 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](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-1741.
- *Mail:* Air and Radiation Docket and Information Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* Air and Radiation Docket and Information Center, EPA, Room B102, 1301 Constitution Ave., 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-2003-0048 (Legacy Docket ID No. A-98-44). 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](http://www.regulations.gov), or e-mail. EPA EDOCKET and the Federal [regulations.gov](http://www.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](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

*Docket.* EPA has established an official public docket for today's notice, including both Docket ID No. OAR-2003-0048 and Legacy Docket ID No. A-98-44. The official public docket consists of the documents specifically referenced in today's notice, any public comments received, and other information related to the notice. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's notice. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, EPA, Room B102, 1301 Constitution Ave., 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 and questions about the public hearing, contact Ms. Mary Tom Kissell, Waste and Chemical Processes Group, Emission Standards Division, Mailcode: C439-03, EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-4516; fax number: (919) 541-0246; e-mail address: [kissell.mary@epa.gov](mailto:kissell.mary@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?
  - B. How do I Submit CBI?
  - C. How do I Obtain a Copy of This Document and Other Related Information?
- II. Background
- III. Why Are We Taking This Action?
- IV. What Issues Relevant to the Low-Risk Subcategory Were Raised in the Petition for Reconsideration?
- V. What Issues Relevant to the Requirements for Periods of Startup, Shutdown, and Malfunction (SSM) Were Raised in the Petition for Reconsideration?
- VI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act

- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act

**I. General Information**

*A. Does This Reconsideration Notice Apply to Me?*

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

Category	SIC code <sup>a</sup>	NAICS code <sup>b</sup>	Examples of regulated entities
Industry .....	2421	321999	Sawmills with lumber kilns.
	2435	321211	Hardwood plywood and veneer plants.
	2436	321212	Softwood plywood and veneer plants.
	2493	321219	Reconstituted wood products plants (particleboard, medium density fiberboard, hardboard, fiberboard, and oriented strandboard plants).
	2439	321213	Structural wood members, not elsewhere classified (engineered wood products plants).

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

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's notice. To determine whether your facility is affected by today's notice, you should examine the applicability criteria in section 63.2231 of the final rule. If you have questions regarding the applicability of today's notice to a particular entity, consult Ms. Mary Tom Kissell 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](http://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 notice also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

**II. Background**

We proposed NESHAP for the PCWP source category on January 9, 2003 (68 FR 1276). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. The preamble for the proposed rule requested comment on how and whether we should incorporate risk-based approaches into the final rule to avoid imposition of regulatory controls on facilities that pose little risk to public health and the environment (see 68 FR 1296-1302, January 9, 2003).

Fifty-seven interested parties submitted comments on the proposed rule during the comment period. Comments were submitted by industry trade associations, PCWP companies,

State regulatory agencies, local government agencies, and environmental groups. We summarized major public comments on the proposed rule, along with our responses to those comments, in the preamble to the final rule and in the background information document. 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 45983-46005, July 30, 2004).

The final rule (subpart DDDD in 40 CFR part 63) was published on July 30, 2004 (69 FR 45944). We adopted a risk-based approach in the final rule by establishing and delisting a low-risk subcategory of PCWP affected sources based on our authority under sections 112(c)(1) and (9) of the Clean Air Act (CAA). The methodology and criteria for PCWP affected sources to use in demonstrating that they are part of the delisted low-risk subcategory were promulgated in appendix B to subpart DDDD of 40 CFR 63 (see 69 FR 46040-46045, July 30, 2004). A description of the procedure for determining that an affected source is part of the low-risk subcategory was provided in the preamble to the final rule (see 69 FR 45953-45955, July 30, 2004).

Affected sources demonstrating that they are part of the delisted low-risk subcategory are not subject to the CAA

section 112(d) maximum achievable control technology (MACT) emission limitations, operating requirements, and work practice requirements in the final PCWP rule (subpart DDDD of CFR part 63), or to any other requirements of CAA section 112. For an affected source to be part of the delisted low-risk subcategory, it must have a low-risk demonstration approved by EPA. It must then have federally enforceable conditions reflecting the parameters used in the EPA-approved demonstration incorporated into its title V permit to ensure that it remains low-risk. EPA conducted low-risk demonstrations for eight facilities, and EPA will not require further demonstration from them before they become part of the delisted low-risk subcategory. These facilities will, however, need to obtain title V permit terms reflecting their status in order to maintain their low-risk eligibility.

### III. Why Are We Taking This Action?

Following promulgation of the PCWP rule, the Administrator received a petition for reconsideration filed by the Natural Resources Defense Council (NRDC) and Environmental Integrity Project (EIP) pursuant to section 307(d)(7)(B) of the CAA.<sup>1</sup> The petition requested reconsideration of nine elements of the final rule: (1) Risk assessment methodology; (2) background pollution and co-located emission sources; (3) the dose-response value used for formaldehyde; (4) costs and benefits of establishing a low-risk subcategory; (5) ecological risk; (6) legal basis for the risk-based approach; (7) MACT compliance date for affected sources previously qualifying for the low-risk subcategory; (8) SSM provisions; and (9) title V implementation mechanism for the risk-based approach. With the exception of the petitioners' issue with the SSM provisions in subpart DDDD of 40 CFR part 63, all of the petitioners' issues relate to the risk-based approach

<sup>1</sup> In addition to the petition for reconsideration, four petitions for judicial review of the final PCWP rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC and Sierra Club (No. 04-1323, D.C. Cir.), EIP (No. 04-1235, D.C. Cir.), Louisiana-Pacific Corporation (No. 04-1328, D.C. Cir.), and Norbord Incorporated (No. 04-1329, D.C. Cir.). The four cases have been consolidated. In addition, the following parties have filed as interveners: American Forest and Paper Association (AF&PA), Hood Industries, Scotch Plywood, Coastal Lumber Company, Composite Panel Association, APA—The Engineered Wood Association, American Furniture Manufacturers Association, NRDC, Sierra Club, and EIP. Finally, the Formaldehyde Council, Inc. and the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) are participating in the litigation as amicus curiae.

adopted in the final rule. The petitioners stated that reconsideration of the above issues is appropriate because they claimed that the issues could not have been practicably raised during the public comment period. The petition for reconsideration also requested a stay of the effectiveness of the risk-based provisions.

In a letter dated December 6, 2004, EPA granted NRDC's and EIP's petition for reconsideration, indicating that the Agency would conduct rulemaking to respond to the petition. In that letter, we also declined the petitioners' request that we take action to stay the effectiveness of the risk-based provisions.

Following signature of the final rule, PCWP industry representatives raised several issues related to implementation of the requirements in appendix B to subpart DDDD, including the emissions testing procedures, stack height calculations, and permitting requirements required to be used by facilities demonstrating eligibility for the low-risk subcategory. Industry stakeholders and State regulatory agencies also expressed concern about a few narrow issues related to subpart DDDD of 40 CFR part 63. We are proposing amendments to the final rule in a separate **Federal Register** action to address these issues, correct any other inconsistencies that were discovered following promulgation, and clarify some common applicability questions. Because the issues raised by the petitioners broadly address the risk provisions, the proposed amendments are relevant to some of the petitioners' issues.

The purpose of today's notice is to request comments on the nine issues in the petition for reconsideration. Stakeholders who would like for us to consider comments relevant to today's reconsideration that were previously submitted, may reference the comments instead of resubmitting them. To reference previously submitted comments, identify the relevant docket entry numbers and page numbers.

### IV. What Issues Relevant to the Low-Risk Subcategory Were Raised in the Petition for Reconsideration?

In their petition for reconsideration (Docket ID No. OAR-2003-0048), NRDC and EIP requested that several of the risk-based provisions adopted in the final PCWP rule be reconsidered. The petitioners contend that there was inadequate opportunity for public comment on the issues prior to promulgation of the final rule and that the issues are of central relevance to the outcome of the rule. We are offering

another opportunity for public comment on the risk-based approach included in the final PCWP rule and on the approach included in appendix B to subpart DDDD. The following text lists the issues raised by the petitioners for which we are requesting comment.

#### 1. Risk Assessment Methodology

The petitioners believe that EPA's description of the low-risk demonstration procedures in the preamble to the proposed PCWP rule did not provide key details that would have allowed the public to fully comment on EPA's intended approach. The petitioners noted that the final PCWP rule contains a new appendix (appendix B to subpart DDDD).

The petitioners commented on: (1) The methodology for calculating the average stack height; (2) the assignment of zero to any hazardous air pollutants (HAP) for which EPA has yet to assign a unit risk estimate<sup>2</sup> (URE); (3) the treatment of all PCWP plants as though their local topography and climate are identical (*e.g.*, factors such as prevailing winds are not considered); (4) the estimate of cancer risks for children; (5) the use of nearest residence rather than exposed individual, possibly closer to the facility, including workers at PCWP facilities; and (6) the facility's ability to choose which criteria to use in their site-specific risk demonstrations.

The approach we used to evaluate potential risks from PCWP sources and to develop the risk assessment methodology outlined in appendix B to subpart DDDD is discussed in the preamble to the final rule (69 FR 45953-45955 and 45983-46005, respectively), in the preamble to the proposed rule (68 FR 1297-1301), and in the supporting documentation (Docket ID No. OAR-2003-0048). Our approach to selecting the HAP listed in table 1 to appendix B to subpart DDDD is described in the preamble to the final rule at 69 FR 45991-45997.

#### 2. Background Pollution and Co-Located Emission Sources

The petitioners stated that the final rule does not require consideration of risks from other HAP sources located at the same plant site (co-located sources) or risks from background ambient HAP concentrations. Our final rule addressed background exposures (including co-located exposures) and hazard index in the preamble to the final rule (69 FR

<sup>2</sup> A unit risk estimate is defined as the upper-bound excess lifetime cancer risk estimated to result from continuous exposure to an agent at a concentration of 1 microgram per cubic meter ( $\mu\text{g}/\text{m}^3$ ) in air.

45997–46001) and in the preamble to the proposed rule (68 FR 1298–1300).

### 3. Dose-Response Value Used for Formaldehyde and Other HAP

The petitioners stated that the preamble to the proposed rule indicated that EPA would use the formaldehyde URE ( $1.3 \times 10^{-5}$  1/(ug/m<sup>3</sup>)) from the Integrated Risk Information System (IRIS), the agency's toxicological database, to calculate whether or not a given source is low-risk. However, the final rule relied on a lower (less potent) URE ( $5.5 \times 10^{-9}$  1/(ug/m<sup>3</sup>)) derived by the CIIT Centers for Health Research without offering an opportunity for public comment on the CIIT model. The petitioners asserted that the CIIT evaluation is limited in a number of important ways and that recent studies link formaldehyde to cancers other than those evaluated by CIIT.

In the preamble to the proposed PCWP rule, we stated that recent reassessments of formaldehyde carcinogenicity have been conducted by the World Health Organization and the Canadian Ministry of Health. These reassessments are based on the approach derived by CIIT. We also stated that the dose-response assessment for formaldehyde was undergoing revision by EPA (see 68 FR 1300). EPA is currently reassessing the scientific information on formaldehyde and will consider all of the available studies, including the CIIT and other studies to which the petitioners referred. The reasoning for our selection of the CIIT value for formaldehyde at the time of the final rule is discussed in the preamble to the final rule at 69 FR 45993–45994. Dose-response relationships are discussed in the preamble to the proposed rule at 68 FR 1300.

Given that the state of science with respect to dose-response values is constantly evolving, we are continuously monitoring the dose-response values for HAP emitted by the PCWP industry in addition to the 13 HAP listed in table 1 to appendix B to subpart DDDD. We are continuing to gather and review new information regarding formaldehyde toxicity. Development of an IRIS assessment for propionaldehyde is underway.

The final rule addresses changes in potency values. Section 13 in appendix B to subpart DDDD requires facilities to consider changes in dose-response values should they become more potent. Therefore, if the IRIS formaldehyde URE, when updated, is more potent than the CIIT value, PCWP facilities would be required to demonstrate that

they are low-risk using the revised IRIS value.

If HAP emitted by PCWP sources, other than the 13 specified in appendix B to subpart DDDD, become significant contributors to risk, we reserve the right to amend the list of HAP that must be included in the low risk determinations. Such an amendment to appendix B to subpart DDDD would specify methods for PCWP facilities in the low-risk subcategory to determine emissions of the HAP and deadlines for submittal of revised low-risk demonstrations incorporating the effects of the HAP.

### 4. Costs and Benefits of the Low-Risk Subcategory

The petitioners questioned the basis of EPA's cost and benefit analyses. Our estimates of the costs and benefits of the final rule are presented in the preamble to the final rule (69 FR 45955–45958) and the supporting documentation (Docket ID No. OAR–2003–0048), “Cost, Environmental, and Energy Impacts Associated with Facilities Potentially Eligible for the Delisted Low-Risk Subcategory of Plywood and Composite Wood Products Facilities;” “Regulatory Impact Analysis for the Plywood and Composite Wood Products NESHAP;” “Regulatory Impact Analysis of the Final Plywood and Composite Wood Products NESHAP; Part 2 of 2.”)

### 5. Ecological Risk

The petitioners stated that the proposal preamble gave few details about how a low-risk subcategory delisting action would be accomplished and did not discuss how ecological risks would be considered. Our analysis of ecological effects is discussed in the preamble to the final rule (69 FR 45998–45999) and in supporting documentation (Docket ID No. OAR–2003–0048). In response to the petitioners' concerns, we have prepared and placed in the docket additional supporting information titled, “Additional Explanation of the Ecological Risk Assessment for Members of the Plywood and Composite Wood Products (PCWP) Source Category—Appendix B”.

### 6. Legal Basis

The petitioners objected to the legal rationale for the low-risk subcategory provided in the preamble to the final rule. The petitioners stated that the risk-based exemptions contravene the statutory language, structure and legislative history of the 1990 CAA Amendments. The preamble to the final PCWP rule presents the legal rationale for our inclusion of a delisted low-risk subcategory of PCWP affected sources in

the final rule (see 69 FR 45984–45991, July 30, 2004) and in the preamble to the proposed rule at 68 FR 1297–1298. We request comment on the legal basis for the risk-based option included in the final rule. Because our approach in the final rule relied upon the authority in section 112(c)(9) of the CAA, we are not asking for comments relating to legal authority under the CAA section 112(d)(4) or *de minimis* principles (see 69 FR 45986–45987).

### 7. MACT Compliance Date for Affected Sources Previously Qualifying for the Low-Risk Subcategory

The petitioners objected to allowing facilities in the low-risk subcategory 3 years to come into compliance with the MACT standard if they are no longer low risk due to factors beyond their control. We discuss the compliance date for sources that become subject to the MACT standards because they no longer are part of the low-risk subcategory in the preamble to the final rule (69 FR 45955) and in section 13(b) of appendix B to subpart DDDD. As the petitioners noted, under EPA MACT rules, sources normally have 3 years following a rule's effective date to comply with a MACT standard to which they are subject. Under the final rule, sources that are no longer part of the low-risk subcategory because of factors within their control (*e.g.*, process changes that increase HAP emissions) must comply with MACT immediately. Sources no longer part of the low-risk subcategory because of factors outside of their control (*e.g.*, changes in dose-response values or population shifts) are allowed 3 years from the date they begin operating outside the low-risk subcategory to comply with MACT.

### 8. Title V Implementation Mechanism

The petitioners contended that the PCWP proposal did not provide notice of the title V implementation approach for the CAA section 112(c)(9) low-risk subcategory adopted in the final rule. The petitioners also contended that the way we use title V to implement the low-risk subcategory is inappropriate and unsupportable for several reasons. Use of title V permits for the implementation of the low-risk subcategory is discussed throughout the preamble and final rule (69 FR 46002–46005).

### V. What Issues Relevant to the Requirements for Periods of Startup, Shutdown, and Malfunction (SSM) Were Raised in the Petition for Reconsideration?

The petitioners stated that EPA replaced the SSM approach from the

proposed PCWP rule with an approach based on the amended General Provisions issued on May 30, 2003, following the close of the public comment period on the PCWP proposal. Thus, the petitioners claimed that the public had no opportunity to comment on the revised SSM approach in the context of the PCWP rule, which, according to the petitioners, does not allow public access to SSM plans. In addition, the petitioners noted that EPA removed the text “you must minimize emissions to the greatest extent possible” when combining proposed sections 63.2250(a) and (d) for the final PCWP rule.

Section 63.2250 of final PCWP rule references the amended sections of the General Provisions regarding public access to SSM plans (section 63.6(e)(3) of the final rule) and general duty to minimize emissions (section 63.6(e)(1)(i) of the final rule). The statement “you must minimize emissions to the greatest extent possible” was removed from the final PCWP rule because different language is included in the amended General Provisions. As stated in the preamble to the final PCWP rule (69 FR 45983), the General Provisions are referenced directly in the PCWP rule to avoid confusion and promote consistency. Although the amendments to the General Provisions are the subject of ongoing litigation and agency reconsideration, the requirements promulgated on May 30, 2003, apply to the final PCWP rule. Therefore, in today’s PCWP notice of reconsideration, we seek comments only on the application of the General Provisions’ SSM provisions to PCWP sources and on SSM issues specific to the PCWP industry.

## VI. Statutory and Executive Order Reviews

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

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

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

State, local, or tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that today’s notice of reconsideration is a “significant regulatory action” because it raises novel legal or policy issues. As such, the notice 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

This action does not impose any new information collection burden. We are not proposing any new paperwork (e.g., monitoring, reporting, recordkeeping) as part of today’s notice. With this action we are seeking additional comments on some of the provisions finalized in the July 2004 **Federal Register** Notice (69 FR 45943). However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0552, EPA ICR number 1984.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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 than 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, I certify that the notice will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources.

### 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.

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 \$74 to \$140 million (depending on the number of facilities eventually demonstrating eligibility for the low-risk subcategory), today's notice does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. 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 is not subject to the Executive Order because EPA does not believe that the environmental health or safety risks associated with the emissions addressed by the proposed amendments present a disproportionate risk to children. The noncancer human health toxicity values we used in our analysis at promulgation (e.g., reference concentrations) are protective of sensitive subpopulations, including children. In addition, for purposes of this rulemaking, EPA has not determined that any of the pollutants in question has the potential for a disproportionate impact on predicted cancer risks due to early-life exposure.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

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 have concluded 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 two 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 (see 69 FR 46010, July 30, 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 notice.

#### 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: July 18, 2005.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. 05-14533 Filed 7-28-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7945-8]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the North Sea Municipal Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 2 is issuing this notice of intent to delete the North Sea Municipal Landfill Superfund Site (Site), located in Southampton, New York from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the New York State Department of Environmental Conservation, have determined that responsible parties have implemented all appropriate response actions required. In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final deletion of the North Sea Municipal Landfill Superfund Site without prior notice of this action because we view this as a noncontroversial revision and anticipate no significant adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no significant adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive significant adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, we will do so in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by August 29, 2005.

**ADDRESSES:** Written comments should be addressed to: Caroline Kwan, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007-1866.

**FOR FURTHER INFORMATION CONTACT:** Ms. Caroline Kwan, Remedial Project Manager, U.S. Environmental Protection Agency, 290 Broadway, 20th floor, New York, NY 10007-1866, (212) 637-4275; Fax Number (212) 637-4284; email address: [kwan.caroline@epa.gov](mailto:kwan.caroline@epa.gov).

**Information Repositories:** Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. Environmental Protection Agency, Region 2, 290 Broadway, Superfund Record Center, Room 1828, New York, NY 10007-1866. Hours: Monday to Friday from 9 a.m. to 5 p.m., Telephone No. (212) 637-4308, Southampton College, Reference Department, 239 Montauk Highway, Southampton, New York 11968-4100, Hours: Monday to Friday till August 12, 2005 from 9 a.m. to 6 p.m., Closed from August 13 till September 5, reopening on September 6, Monday to Thursday from 10 a.m. to 9 p.m., Saturday: 12 p.m. to 5 p.m., Telephone No. 631-287-8379, The Rogers Memorial Library (Reference Department), 91 Coopers Farms Road, Southampton, New York 11968-4002, Hours: Monday to Thursday from 10 a.m. to 9 p.m., Friday: 10 a.m. to 7 p.m., Saturday: 10 a.m. to 5 p.m., Sunday: 1 p.m. to 5 p.m., Telephone No. (632) 283-0774.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Deletion which is located in the Rules section of this **Federal Register**.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 22, 2005.

**George Pavlou,**

*Acting Regional Administrator, USEPA, Region 2.*

[FR Doc. 05-15043 Filed 7-28-05; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF ENERGY

### 48 CFR Parts 909, 913, and 970

RIN 1991-AB62

#### Acquisition Regulation: Technical Revisions or Amendments To Update Clauses

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend its acquisition regulation to remove and add specified clauses, and revise certain