

action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999), because it merely approves a state request to waive certain requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove this submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a waiver request to require VCS in a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 15, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*  
[FR Doc. 05-16814 Filed 8-23-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[OAR-2002-0057; FRL-7959-3]

RIN 2060-AM25

### National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

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

**ACTION:** Proposed rule; amendments.

**SUMMARY:** On April 17, 2003, we published the national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities (HCl Production NESHAP) (68 FR 19076). We are proposing to amend the existing rule by clarifying certain applicability provisions, emission standards, and testing, maintenance, and reporting requirements. The proposed amendments would also correct several omissions and typographical errors in the final rule. We are proposing the amendments to facilitate compliance and improve understanding of the final rule requirements.

**DATES:** *Comments.* Comments must be received on or before October 24, 2005.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by September 13, 2005, a public hearing will be held on September 23, 2005.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. OAR-2002-0057 (formerly Docket ID No. A-99-41), 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 Docket, EPA Docket Center, U.S. EPA West, Mailcode 6102T, Room B-108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: EPA Docket Center, Room B-108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004. 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-2002-0057. 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.epa.gov/regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.epa.gov/regulations.gov) websites 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.epa.gov/regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket.* EPA has established an official public docket for this action including both Docket ID No. OAR-2002-0057 and legacy Docket ID No. A-99-41. The official public docket consists of the information related to this action. Not all items are listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the proposed amendments. 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 EPA Docket Center (Air Docket), EPA West, Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**Public Hearing.** If a public hearing is requested, it will be held at the EPA facility complex in Research Triangle Park, N.C. at 10 a.m. Persons interested in attending the hearing or wishing to present oral testimony should notify Eloise Shepherd, Combustion Group (MD-C439-01), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5578 at least 2 days in advance of the hearing.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Maxwell, Combustion Group, Emission Standards Division (C439-01),

U.S. EPA, Research Triangle Park, N.C., 27711; telephone number (919) 541-5430; fax number (919) 541-5450; electronic mail address: [maxwell.bill@epa.gov](mailto:maxwell.bill@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated entities.* Entities that will potentially be affected by the proposed amendments are those that produce HCl and are major sources of hazardous air pollutants (HAP) as defined in section 112 of the Clean Air Act (CAA). The regulated categories and entities include:

Category	SIC <sup>a</sup>	NAICS <sup>b</sup>	Regulated entities
Industry .....	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

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

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in section 63.8985 of the HCl Production NESHAP. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Submitting CBI.** Do not submit this information to EPA through EDOCKET, [regulations.gov](http://regulations.gov) or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer, Mailcode C404-02, U.S. EPA, Research Triangle Park, NC 27709, Attention Docket ID No. OAR-2002-0057. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

**Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**World Wide Web (WWW).** The text of today's document will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

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

- I. Background
- II. Summary of Proposed Amendments
  - A. Applicability
  - B. Definitions
  - C. Emission Standards
  - D. Storage Tank Maintenance
  - E. Notification and Reporting Requirements
  - F. Omissions and Typographical Corrections
- III. 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 Advancement Act

**I. Background**

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories (57 FR 31576, July 16, 1992). We later combined these two source categories for regulatory purposes and renamed the combined source category "HCl Production" (66 FR 48174, September

18, 2001). The next revision to the source category list will reflect this change. Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP. The CAA requires the national emission standards for HAP to reflect the maximum degree of reduction in HAP emissions that is achievable. This level of control is commonly known as the maximum achievable control technology (MACT).

On April 17, 2003, EPA published final standards (68 FR 19076) for the control of HAP from HCl production (40 CFR part 63, subpart NNNNN). The final rule contains emission limitations and standards applicable to HCl and chlorine (Cl<sub>2</sub>). These limits apply to each new or existing HCl process vent, HCl storage tank, HCl transfer operation, and leaks from equipment in HCl service located at a major source of HAP.

After promulgation, some applicability- and compliance-related issues, in addition to several inadvertent omissions and typographical errors, were identified. We are proposing today's amendments to address these issues.

## II. Summary of Proposed Amendments

We are proposing to amend 40 CFR part 63, subpart NNNNN, to change the applicability provisions, to clarify testing, monitoring, and reporting requirements, and to correct inadvertent omissions and typographical errors. A summary of each of the proposed amendments to 40 CFR part 63, subpart NNNNN, and the rationale for each is presented below.

### A. Applicability

In order to avoid regulatory overlap, the HCl Production NESHAP exempts certain HCl production facilities that are part of other source categories and subject to other Federal standards. We intended the HCl Production NESHAP to cover only those HCl production facilities that were not subject to any other MACT standards and not to cover those HCl production facilities that were subject to other MACT standards. Today's proposed amendments would change the applicability provisions to rectify three situations that came to our attention after promulgation of the HCl Production NESHAP in which this intent was not satisfied.

First, the proposed amendments would address the HCl Production NESHAP's exemptions for HCl production facilities that are subject to certain other regulations, including 40 CFR part 63, subpart EEE (the

Hazardous Waste Combustors NESHAP), and 40 CFR 266.107, subpart H (regulations issued under the Resource Conservation and Recovery Act governing the Burning of Hazardous Wastes in Boilers and Industrial Furnaces).<sup>1</sup> As currently worded, the exemptions are overly broad, because neither of the final rules covers emissions of HCl from HCl storage tanks, HCl transfer operations, or leaks from equipment in HCl service at these facilities. This leaves these emission points not subject to any Federal standards, which was not our intent. Therefore, we are proposing to amend subpart NNNNN of 40 CFR part 63 to exempt facilities that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the applicability requirements of subpart NNNNN from only the HCl process vent provisions of subpart NNNNN, rather than from all of the requirements of subpart NNNNN. Because the purpose of 40 CFR 63.8985(b) and (c) is to provide exemptions from all of the requirements of subpart NNNNN for entire HCl production facilities subject to certain other rules, we are proposing to remove 40 CFR 63.8985(b)(4) and (c)(3) to eliminate the overly broad exemptions and instead to add new paragraphs to 40 CFR 63.9000(c) to accomplish the proposed amendments. The purpose of 40 CFR 63.9000(c) is to exempt certain emission streams from subpart NNNNN. Under proposed 40 CFR 63.9000(c), plants that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the other applicability provisions of subpart NNNNN would be affected sources under subpart NNNNN but would be exempt from the process vents provisions of subpart NNNNN.

Second, the proposed amendments would revise the HCl Production NESHAP's exemptions for specific emission streams to eliminate duplicative regulation. Some emission points that are not themselves subject to subpart EEE of 40 CFR part 63 have their emissions controlled under subpart EEE because their emissions are routed directly through equipment that is subject to subpart EEE (e.g., an HCl process vent emission stream routed to a hazardous waste combustor for use as supplemental combustion air).

<sup>1</sup> Proposed amendments to subpart EEE, 40 CFR part 63 (69 FR 21198, March 31, 2004), include standards for HCl production furnaces that burn hazardous waste and propose to subject hazardous waste combustors that are HCl production facilities under 40 CFR part 266, subpart H, to NESHAP under 40 CFR part 63, subpart EEE. Promulgation of the standards is forthcoming.

Currently, these emissions (e.g., from the combustor) are regulated by both subpart EEE and subpart NNNNN of 40 CFR part 63. To rectify this situation, we are proposing to add a new paragraph to 40 CFR 63.9000(c) to include an emission stream-specific exemption for HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to hazardous waste combustors subject to subpart EEE. This means that under the proposal, HCl production facility emission streams that are routed to subpart EEE hazardous waste combustors would be exempt from the requirements of subpart NNNNN.

Finally, the proposed amendments would remove the HCl Production NESHAP's exemption for HCl production facilities subject to 40 CFR 264.343(b), subpart O (Incinerators), which will no longer be necessary. A combustor that burns hazardous waste and meets the subpart NNNNN of 40 CFR part 63 definition of an HCl production facility would be defined as a halogen acid furnace (currently subject to 40 CFR 266.107, subpart H, and that would be subject to 40 CFR part 63, subpart EEE, under EPA's proposal at 69 FR 21198), not an incinerator (subject to 40 CFR 264.343(b), subpart O). As discussed above, we are proposing to amend the applicability provisions of the HCl Production NESHAP to properly address HCl production facilities that are subject to subpart H. Therefore, the exemption for subpart O will no longer be necessary, and we are proposing to remove 40 CFR 63.8985(c)(2), which provided this exemption. Consequently, we are proposing to incorporate the exemption provided in 40 CFR 63.8985(c)(1) into 40 CFR 63.8985(c), thus removing 40 CFR 63.8985(c)(1).

### B. Definitions

We are proposing to clarify the meaning of "equipment in HCl service," which is defined in the HCl Production NESHAP as "each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time" (see 40 CFR 63.9075). This definition could be interpreted to include equipment that is located at the same plant site as an "HCl production facility" (see 40 CFR 63.8985(a)(1)) but is not part of the HCl production facility. We intended to include only equipment that meets the above definition and is located within an HCl production facility. Therefore, we are

proposing to amend the definition of "equipment in HCl service" in 40 CFR 63.9075 to clarify that the definition applies only to equipment within an HCl production facility.

### C. Emission Standards

The HCl Production NESHAP specifies the emission limits for existing and new HCl process vents, HCl storage tanks, and HCl transfer operations in two forms—a percent reduction and an outlet concentration—and allows HCl production facilities to comply with either one. However, the wording of the emission limits could be construed to require the use of an add-on control device even when an emission point meets the outlet concentration emission limit without an add-on control device. It was not our intent to require add-on control devices when they are unnecessary for compliance. While a percent reduction emission limit would need to be achieved through the use of an add-on control device, we recognize that an outlet concentration emission limit could be achieved through other means (e.g., process changes, pollution prevention). Therefore, we are proposing to amend table 1 to subpart NNNNN of 40 CFR part 63 to clarify that it is not necessary to use an add-on control device in order to meet the outlet concentration form of the emission limits. In addition, we are proposing to amend tables 3 and 5 to subpart NNNNN to specify the sampling port location and continuous compliance requirements, respectively, for sources that are not equipped with an add-on control device. Also, we are proposing to amend 40 CFR 63.9015(a) to require that emission points meeting the outlet concentration limits without the use of a control device conduct subsequent performance tests when process changes are made that could reasonably be expected to change the outlet concentration. Finally, we are proposing to amend 40 CFR 63.9050 by adding paragraph (c)(9), which specifies that compliance reports must include verification that no process changes that could reasonably be expected to change the outlet concentration have been made since the last performance test.

### D. Storage Tank Maintenance

The HCl Production NESHAP is silent on the issue of how maintenance is to be conducted on HCl storage tank control devices. This could lead to uncertainty over whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. It was not our intent that an HCl storage

tank would need to be emptied prior to maintenance because the standing losses associated with a full or partially-full HCl storage tank are low, when compared to the emissions that occur from filling and emptying the tank. To clarify our intent, we are proposing to amend 40 CFR 63.9000, by adding paragraph (d), to allow HCl production facilities to perform planned routine maintenance on each HCl storage tank control device for up to 240 hours per year without emptying the contents of the tank. During this time, the storage tank emission limitations would not apply. Also, we are proposing to amend 40 CFR 63.9050, by adding paragraph (c)(10), and 40 CFR 63.9055, by adding paragraph (b)(6), to specify the reporting and recordkeeping requirements for planned routine maintenance events. These provisions are consistent with other NESHAP to which plant sites containing HCl production facilities may be subject.

### E. Notification and Reporting Requirements

#### 1. Notification of Compliance Status

The HCl Production NESHAP requires the submission of a Notification of Compliance Status (NOCS) to the Administrator when a performance test is conducted (see 40 CFR 63.9045(a), table 7 to subpart NNNNN of 40 CFR part 63, and 40 CFR 63.9(h)). It could be interpreted that 40 CFR 63.9045(e) and (f) require the submission of a separate NOCS for each performance test that is conducted (e.g., on each emission point). It is more efficient and no less effective for HCl production facilities to submit one NOCS for the entire affected source, rather than one NOCS for each emission point tested, and it was not our intent to require unnecessary paperwork. Therefore, we are proposing to amend 40 CFR 63.9045 to change the submission procedures for NOCS. We are proposing to allow NOCS to be submitted within 240 calendar days of the compliance dates for subpart NNNNN of 40 CFR part 63. The amendment would allow for the submission of only one NOCS per affected source because the notification is due 60 days after all performance tests are required to be conducted. We are also proposing to amend table 7 to subpart NNNNN to reflect this change to the NOCS submission procedures.

#### 2. Monitoring and Leak Detection and Repair (LDAR) Plans

The HCl Production NESHAP requires submission of the initial site-specific monitoring (40 CFR 63.9005(d)) and

LDAR (LDAR; table 1 to subpart NNNNN of 40 CFR part 63) plans to the Administrator with a source's NOCS. The final rule does not, however, specify when or how revisions to these plans should be submitted, only that they should be submitted (40 CFR 63.9055(b)(5)). Submission of revisions to these plans is most efficiently done in conjunction with the semi-annual compliance report required by 40 CFR 63.9050. Therefore, we are proposing to amend 40 CFR 63.9050(c) by adding paragraph (c)(8) to require submission of revisions to site-specific monitoring plans and LDAR plans with semi-annual compliance reports, if revisions have been made during the reporting period.

### F. Omissions and Typographical Corrections

We are proposing to add an exemption which was inadvertently omitted from the HCl Production NESHAP. In the preamble to the final rule (68 FR 19082), we indicated that we would include an exemption for HCl production facilities subject to 40 CFR 63.994, subpart SS. Because this exemption was not included in the final rule text, we are proposing to amend the rule to include it. Because we are proposing to remove 40 CFR 63.8985(b)(4), we are proposing to replace it with the exemption for 40 CFR 63.994, subpart SS.

We are proposing to remove the phrase "/Cl<sub>2</sub>" from 40 CFR 63.8990(b)(4) to reflect a change made between the proposed rule and the final rule which was retained incorrectly in the final rule. The proposed rule used the term "in HCl/Cl<sub>2</sub> service," but we wrote this term as "equipment in HCl service" in the final rule. We are proposing to make the same change in the first column of table 1, item 4 of subpart NNNNN of 40 CFR part 63.

We are proposing to correct an inaccurate reference in 40 CFR 63.9025(a) regarding operating parameters. The reference should be to 40 CFR 63.9020(e), which requires operating parameters to be established, rather than to 40 CFR 63.9020(d). This was a typographical error in the final rule.

We are proposing to correct an inaccurate reference in the definition of "HCl production facility" in 40 CFR 63.9075. The reference to 40 CFR 63.8985(a)(i) should be to 40 CFR 63.8985(a)(1) because 40 CFR

63.8985(a)(i) does not exist. This was a typographical error in the final rule.

### III. Statutory and Executive Order Reviews

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

Under Executive Order (EO) 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 EO. The EO 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 EO.

Pursuant to the terms of EO 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the EO. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### B. Paperwork Reduction Act

The OMB has approved the information collection requirements in the 2003 NESHAP for HCl production under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0529. EPA has prepared a revision to the currently approved information collection request (ICR), and you may obtain a copy of the currently approved ICR and the revised ICR from Susan Auby by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. Copies may also be downloaded off the internet at <http://www.epa.gov/icr>. Most of the proposed amendments are not expected to have an impact on the ICR burden. However,

the ICR has been revised because two of today's proposed rule amendments are expected to change the burden slightly. The proposed exemption for individual emission streams that are routed to 40 CFR part 63, subpart EEE, hazardous waste combustors is expected to decrease the reporting and recordkeeping burden for some sources. The planned routine maintenance allowance is expected to increase the reporting and recordkeeping burden for all sources. Overall, the total annual reporting and recordkeeping burden is expected to be 733 hours (1 percent) lower than for the final rule.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 *et seq.*, 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 rule on small entities, small entity is defined as a small business according to Small Business Administration (SBA) size standards by the North American Industry Classification System (NAICS) category of the owning parent entity. The small business size standard for the affected industries (NAICS 325181, Alkalies and Chlorine Manufacturing, and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing) is a maximum of 1,000 employees for an entity.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, as amended by the SBREFA, 5 U.S.C. 601, *et seq.*, we conducted an assessment of the final rule on small businesses within the industries affected by the final rule. This analysis allowed us to certify that there would not be a significant impact on a substantial number of small entities from the implementation of the final rule. There is nothing contained in the proposed amendments that will impact small businesses in any way not considered in the analysis of the final rule; this means that the proposed amendments have no incremental impact on small businesses beyond

what was already examined in the final rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's proposed amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments. EPA has determined that the proposed amendments do 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. Thus, today's proposed amendments are not subject to the

requirements of sections 202 and 205 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” is defined in the EO 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.” The proposed amendments do not have federalism implications. They 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 EO 13132. None of the affected facilities are owned or operated by State governments. Thus, EO 13132 does not apply to the proposed amendments.

*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.” The proposed amendments will not have Tribal implications, as specified in EO 13175. They 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. No Tribal governments own facilities subject to the HCl Production NESHAP. Thus, EO 13175 does not apply to these proposed amendments.

*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 EO 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 the Agency. EPA interprets EO 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. The proposed amendments are not subject to EO 13045 because they are based on technology performance and not on health or safety risks. Nor are the proposed amendments “economically significant” under EO 12866, as discussed in section III(A) of this preamble.

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

Today’s action is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 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 (such as material specifications, test methods, sampling procedures, or business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The proposed amendments do not involve changes to the technical standards in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards in the proposed amendments.

**List of Subjects in 40 CFR Part 63**

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

Dated: August 17, 2005.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I, part 63 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 NNNNN—[Amended]**

2. Section 63.8985 is amended by revising paragraphs (b)(4) and (c) to read as follows:

**§ 63.8985 Am I subject to this subpart?**

\* \* \* \* \*

(b) \* \* \*

(4) 40 CFR part 63, § 63.994, subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

\* \* \* \* \*

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to § 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

\* \* \* \* \*

3. Section 63.8990 is amended by revising paragraph (b)(4) to read as follows:

**§ 63.8990 What parts of my plant does this subpart cover?**

\* \* \* \* \*

(b) \* \* \*

(4) Each emission stream resulting from leaks from equipment in HCl service.

\* \* \* \* \*

4. Section 63.9000 is amended by:  
a. Revising paragraph (a);  
b. Revising the introductory text of paragraph (c);  
c. Adding paragraphs (c)(4) through (c)(6); and  
d. Adding paragraph (d).

**§ 63.9000 What emission limitations and work practice standards must I meet?**

(a) With the exceptions noted in paragraphs (c) and (d) of this section, you must meet the applicable emission limit and work practice standard in

table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

\* \* \* \* \*

(c) The emission streams listed in paragraphs (c)(1) through (6) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

\* \* \* \* \*

(4) Emission streams from HCl process vents that are also subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

(5) Emission streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to hazardous waste incinerators that are subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

(6) Emission streams from HCl process vents that are located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes and that are also subject to § 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) The emission limits for HCl storage tanks in table 1 to this subpart do not apply during periods of planned routine maintenance of HCl storage tank control devices. Periods of planned routine maintenance of each HCl storage tank control device, during which the control device does not meet the emission limits specified in table 1 to this subpart, shall not exceed 240 hours per year.

5. Section 63.9015 is amended by revising paragraph (a) to read as follows:

**§ 63.9015 When must I conduct subsequent performance tests?**

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit. For emission points meeting the outlet concentration limits in table 1 to this subpart without the use of a control device, all applicable performance tests must also be conducted whenever process changes are made that could reasonably be expected to change the outlet concentration. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of

this paragraph, process changes do not include: process upsets and unintentional, temporary process changes.

\* \* \* \* \*

6. Section 63.9025 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?**

(a) For each operating parameter that you are required by § 63.9020(e) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

\* \* \* \* \*

7. Section 63.9045 is amended by:  
a. Removing and reserving paragraph (e); and  
b. Revising paragraph (f).

**§ 63.9045 What notifications must I submit and when?**

\* \* \* \* \*

(f) You must submit the Notification of Compliance Status, including the performance test results, within 240 calendar days after the applicable compliance dates specified in § 63.8995.

\* \* \* \* \*

8. Section 63.9050 is amended by:  
a. Revising the introductory text of paragraph (c); and  
b. Adding paragraphs (c)(8) through (c)(10).

**§ 63.9050 What reports must I submit and when?**

\* \* \* \* \*

(c) The compliance report must contain the following information in paragraphs (c)(1) through (10) of this section.

\* \* \* \* \*

(8) If you did not make revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period. If you made revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a copy of the revised plan.

(9) If you meet the outlet concentration limit in table 1 to this subpart without the use of a control device for any emission point, verification that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for that emission point.

(10) The information specified in paragraphs (c)(10)(i) and (ii) of this

section for those planned routine maintenance operations that caused or may cause an HCl storage tank control device not to meet the emission limits in table 1 to this subpart, as applicable.

(i) A description of the planned routine maintenance that was performed for each HCl storage tank control device during the reporting period. This description shall include the type of maintenance performed and the total number of hours during the reporting period that the HCl storage tank control device did not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance.

(ii) A description of the planned routine maintenance that is anticipated to be performed for each HCl storage tank control device during the next reporting period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

\* \* \* \* \*

9. Section 63.9055 is amended by adding paragraph (b)(6) to read as follows:

**§ 63.9055 What records must I keep?**

\* \* \* \* \*

(b) \* \* \*

(6) Records of the planned routine maintenance performed on each HCl storage tank control device including the duration of each time the control device does not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were not met at the beginning of the planned routine maintenance, and

(ii) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were met at the conclusion of the planned routine maintenance.

10. Section 63.9075 is amended by revising the definitions of "Equipment in HCl service" and "HCl production facility" to read as follows:

**§ 63.9075 What definitions apply to this subpart?**

\* \* \* \* \*

Equipment in HCl service means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in an HCl production facility that contains 30 weight percent or greater of

liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

\* \* \* \* \*

HCl production facility is defined in § 63.8985(a)(1).

\* \* \* \* \*

11. Table 1 in subpart NNNNN is revised to read as follows:

As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source:

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

For each . . .	You must meet the following emission limit and work practice standard . . .
1. Emission stream from an HCl process vent at an existing source.	a. Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 20 ppm by volume or less; and b. Reduce Cl <sub>2</sub> emissions by 99 percent or greater or achieve an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storage tank at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl service at existing and new sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator for comment only with your Notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source.	a. Reduce HCl emissions by 99.4 percent or greater or achieve an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl <sub>2</sub> emissions by 99.8 percent or greater or achieve an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source.	Reduce HCl emissions by 99.9 percent or greater or achieve an outlet concentration of 12 ppm by volume or less.
7. Emission stream from an HCl transfer operation at a new source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.

12. Table 3 in subpart NNNNN is revised to read as follows:

As stated in § 63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere or, if no control device is used, prior to any releases to the atmosphere.
2. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight	a. Not applicable .....	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas.	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl <sub>2</sub> concentration from HCl process vents.	a. Method 26A in Appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl <sub>2</sub> concentration from an HCl process vent provided that a demonstration that Cl <sub>2</sub> is not likely to be present in the stream is submitted as part of the site-specific test plan required by § 63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgment, or previous test results.

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES—Continued

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with § 63.9020(e)(1) or (2).		

13. Table 5 in subpart NNNNN is revised to read as follows: As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/absorber.	a. In Tables 1 and 2 to this subpart.	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to § 63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
2. Affected source using any other control device.	a. In Tables 1 and 2 to this subpart.	i. Conducting monitoring according to your monitoring plan established under § 63.8(f) in accordance with § 63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under § 63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under § 63.8(f).
3. Affected source using no control device.	a. In Tables 1 and 2 to this subpart.	i. Verifying that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for an emission point.
4. Leaking equipment affected source.	a. In Table 1 to this subpart . . . . .	i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

14. Table 7 in subpart NNNNN is revised to read as follows: As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.1 . . . . .	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	Additional definitions are found in § 63.9075.
§ 63.2 . . . . .	Definitions . . . . .	Yes . . . . .	
§ 63.3 . . . . .	Units and abbreviations . . . . .	Yes.	
§ 63.4 . . . . .	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5 . . . . .	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a) . . . . .	Compliance with standards and maintenance requirements—applicability.	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—  
Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.6(b)(1)–(4) .....	Compliance dates for new or reconstructed sources .....	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5) .....	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6) .....	[Reserved] .....	Yes.	
§ 63.6(b)(7) .....	Compliance dates for new or reconstructed area sources that become major.	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2) .....	Compliance dates for existing sources .....	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4) .....	[Reserved] .....	Yes.	
§ 63.6(c)(5) .....	Compliance dates for existing area sources that become major.	Yes .....	§ 63.8995 specifies compliance dates.
§ 63.6(d) .....	[Reserved] .....	Yes.	
§ 63.6(e)(1)–(2) .....	Operation and maintenance requirements .....	Yes.	
§ 63.6(e)(3) .....	SSM plans .....	Yes.	
§ 63.6(f)(1) .....	Compliance except during SSM .....	Yes.	
§ 63.6(f)(2)–(3) .....	Methods for determining compliance .....	Yes.	
§ 63.6(g) .....	Use of an alternative non-opacity emission standard .....	Yes.	
§ 63.6(h) .....	Compliance with opacity/visible emission standards .....	No .....	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.6(i) .....	Extension of compliance with emission standards .....	Yes.	
§ 63.6(j) .....	Presidential compliance exemption .....	Yes.	
§ 63.7(a)(1)–(2) .....	Performance test dates .....	Yes .....	Except for existing affected sources as specified in § 63.9010(b).
§ 63.7(a)(3) .....	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	
§ 63.7(b) .....	Notification of performance test and rescheduling .....	Yes.	
§ 63.7(c) .....	Quality assurance program and site-specific test plans .....	Yes.	
§ 63.7(d) .....	Performance testing facilities .....	Yes.	
§ 63.7(e)(1) .....	Conditions for conducting performance tests .....	Yes.	
§ 63.7(f) .....	Use of an alternative test method .....	Yes.	
§ 63.7(g) .....	Performance test data analysis, recordkeeping and reporting ..	Yes.	
§ 63.7(h) .....	Waiver of performance tests .....	Yes.	
§ 63.8(a)(1)–(3) .....	Applicability of monitoring requirements .....	Yes .....	Additional monitoring requirements are found in § 63.9005(d) and 63.9035.
§ 63.8(a)(4) .....	Monitoring with flares .....	No .....	Subpart NNNNN does not refer directly or indirectly to § 63.11.
§ 63.8(b) .....	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3) .....	Continuous monitoring system O&M .....	Yes .....	Applies as modified by § 63.9005(d).
§ 63.8(c)(4) .....	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes .....	Applies as modified by § 63.9005(d).
§ 63.8(c)(5) .....	Continuous opacity monitoring system (COMS) minimum procedures.	No .....	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.8(c)(6) .....	Zero and high level calibration checks .....	Yes .....	Applies as modified by § 63.9005(d).
§ 63.8(c)(7)–(8) .....	Out-of-control periods, including reporting .....	Yes.	
§ 63.8(d)–(e) .....	Quality control program and CMS performance evaluation .....	No .....	Applies as modified by § 63.9005(d).
§ 63.8(f)(1)–(5) .....	Use of an alternative monitoring method .....	Yes.	
§ 63.8(f)(6) .....	Alternative to relative accuracy test .....	No .....	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g) .....	Data reduction .....	Yes .....	Applies as modified by § 63.9005(d).
§ 63.9(a) .....	Notification requirements—applicability .....	Yes.	
§ 63.9(b) .....	Initial notifications .....	Yes .....	Except § 63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1) (iii) in lieu of the initial notification.

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—  
Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.9(c) .....	Request for compliance extension .....	Yes.	
§ 63.9(d) .....	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e) .....	Notification of performance test .....	Yes.	
§ 63.9(f) .....	Notification of visible emissions/opacity test .....	No .....	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.9(g)(1) .....	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2) .....	Use of COMS data .....	No .....	Subpart NNNNN does not require the use of COMS.
§ 63.9(g)(3) .....	Alternative to relative accuracy testing .....	No .....	Applies only to sources with CEMS.
§ 63.9(h) .....	Notification of compliance status .....	Yes .....	Except the submission date specified in § 63.9(h)(2)(ii) is superseded by the date specified in § 63.9045(f).
§ 63.9(i) .....	Adjustment of submittal deadlines .....	Yes.	
§ 63.9(j) .....	Change in previous information .....	Yes.	
§ 63.10(a) .....	Recordkeeping/reporting applicability .....	Yes.	
§ 63.10(b)(1) .....	General recordkeeping requirements .....	Yes .....	§§ 63.9055 and 63.9060 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi) .....	Records related to SSM periods and CMS .....	Yes.	
§ 63.10(b)(2)(xii) .....	Records when under waiver .....	Yes.	
§ 63.10(b)(2)(xiii) .....	Records when using alternative to relative accuracy test .....	No .....	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv) .....	All documentation supporting initial notification and notification of compliance status.	Yes.	
§ 63.10(b)(3) .....	Recordkeeping requirements for applicability determinations ...	Yes.	
§ 63.10(c) .....	Additional recordkeeping requirements for sources with CMS	Yes .....	Applies as modified by § 63.9005(d).
§ 63.10(d)(1) .....	General reporting requirements .....	Yes .....	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2) .....	Performance test results .....	Yes .....	§ 63.9045(f) specifies submission date.
§ 63.10(d)(3) .....	Opacity or visible emissions observations .....	No .....	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4) .....	Progress reports for sources with compliance extensions .....	Yes.	
§ 63.10(d)(5) .....	SSM reports .....	Yes.	
§ 63.10(e)(1) .....	Additional CMS reports—general .....	Yes .....	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i) .....	Results of CMS performance evaluations .....	Yes .....	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(ii) .....	Results of COMS performance evaluations .....	No .....	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3) .....	Excess emissions/CMS performance reports .....	Yes.	
§ 63.10(e)(4) .....	Continuous opacity monitoring system data reports .....	No .....	Subpart NNNNN does not require the use of COMS.
§ 63.10(f) .....	Recordkeeping/reporting waiver .....	Yes.	
§ 63.11 .....	Control device requirements—applicability .....	No .....	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12 .....	State authority and delegations .....	Yes .....	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13 .....	Addresses .....	Yes.	
§ 63.14 .....	Incorporation by reference .....	Yes .....	Subpart NNNNN does not incorporate any material by reference.
§ 63.15 .....	Availability of information/confidentiality .....	Yes.	

[FR Doc. 05-16813 Filed 8-23-05; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AU04; 1018-AU 09; 1018-AU13; 1018-AU28

#### Migratory Bird Hunting; Approval of Tungsten-Iron-Copper-Nickel, Iron-Tungsten-Nickel Alloy, and Tungsten-Bronze (Additional Formulation), and Tungsten-Tin-Iron Shot Types as Nontoxic for Hunting Waterfowl and Coots; Availability of Environmental Assessments

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (we, us, or USFWS) proposes to approve four shot types or alloys for hunting waterfowl and coots and to change the listing of approved nontoxic shot types in 50 CFR 20.21(j) to reflect the cumulative approvals of nontoxic shot types and alloys.

These four shot types or alloys were submitted to us separately, and we published advance notices of proposed rulemakings for these shot types under RINs 1018-AU04, 1018-AU09, 1018-AU13, and 1018-AU28, respectively. We now combine all these actions under RIN 1018-AU04.

In addition, we propose to approve alloys of several metals because we have approved the metals individually at or near 100% in nontoxic shot.

**DATES:** Send comments on this proposal by September 23, 2005.

**ADDRESSES:** You may submit comments, identified by RIN 1018-AU04, by any of the following methods:

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

- Agency Web Site: <http://migratorybirds.fws.gov>. Follow the links to submit a comment.

- E-mail address for comments: [George\\_T\\_Allen@fws.gov](mailto:George_T_Allen@fws.gov). Include "RIN 1018-AU04" in the subject line of the message. Please submit electronic comments as text files; do not use file compression or any special formatting.

- Fax: 703-358-2217.
- Mail: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP-4107, Arlington, Virginia 22203-1610.

- Hand Delivery: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203-1610.

For specific instructions on submitting or inspecting public comments, inspecting the complete file for this rule, or requesting a copy of the draft environmental assessment, see Public Comments in **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, 703-358-1714.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703-711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916, amended), Mexico (1936, amended), Japan (1972, amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the U.S. Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We addressed the issue of lead poisoning in waterfowl in an Environmental Impact Statement in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

We have received applications for approval of four shot types as nontoxic for hunting waterfowl and coots. Those shot types are:

1. Tungsten-Iron-Copper-Nickel (TICN) shot, of 40-76 percent tungsten,

10-37 percent iron, 9-16 percent copper, and 5-7 percent nickel (70 FR 3180, January 21, 2005);

2. Iron-Tungsten-Nickel (ITN) alloys composed of 20-70 percent tungsten, 10-40 percent nickel, and 10-70 percent iron (70 FR 22625, May 2, 2005);

3. Tungsten-Bronze (TB) shot made of 60 percent tungsten, 35.1 percent copper, 3.9 percent tin, and 1 percent iron (70 FR 22624, May 2, 2005, Note: This formulation differs from the Tungsten-Bronze nontoxic shot formulation approved in 2004.); and

4. Tungsten-Tin-Iron (TTI) shot composed of 58 percent tungsten, 38 percent tin, and 4 percent iron.

The metals in these shot types have already been approved in other nontoxic shot types. In considering approval of these shot types, we were particularly concerned about the solubility and bioavailability of the nickel and copper in them. In addition, because tungsten, tin, and iron have already been approved at very high proportions of other nontoxic shot types with no known negative effects of the metals, we will propose approval of all alloys of these four metals.

The data provided to us indicate that the shot types are nontoxic when ingested by waterfowl and should not pose a significant danger to migratory birds, other wildlife, or their habitats. We conclude that they raise no particular concerns about deposition in the environment or about ingestion by waterfowl or predators.

The process for submission and evaluation of new shot types for approval as nontoxic is given at 50 CFR 20.134. The list of shot types approved as nontoxic for use in hunting migratory birds is provided in the table at 50 CFR 20.21(j). With this proposed rule, we also propose to revise the listing of approved nontoxic shot types in § 20.21(j) to include the cumulative approvals of the shot types considered in this proposed rule with the other nontoxic shot types already in the table.

Many hunters believe that some nontoxic shot types do not compare favorably to lead and that they may damage some shotgun barrels, and a small percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting has increased in recent years (Anderson *et al.* 2000), but we believe that compliance will continue to increase with the availability and approval of other