ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0027; FRL–8983–6]

RIN 2060–AO94

National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating national emissions standards for the control of emissions of hazardous air pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category. These final emissions standards for new and existing sources are based upon EPA's final determination as to what constitutes the generally available control technology or management practices (GACT) for the source category.

DATES: This final rule is effective on December 2, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0027. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information 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 through *http://www.regulations.gov* or in hard copy at the EPA Public Reading Room under the heading ''Area Source National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asphalt Processing and Asphalt Roofing Manufacturing.'' The Public Reading Room is located at EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC and 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Outreach and Information Division, Office of Air Quality Planning and Standards (MC–C404–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–5124; *fax number:* (919) 541–0242; *e-mail address: johnson.warren@epa.gov.*

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

I. General Information
A. Does This Action Apply to Me?
B. Where Can I Get a Copy of This Document?
C. Judicial Review
II. Background Information for This Final Rule
III. Summary of Major Changes Since Proposal
IV. Summary of Final Standards
A. Do the Final Standards Apply to My Source?
B. When Must I Comply With the Final Standards?
C. What Are the Final Standards?
D. What Are the Initial and Continuous Compliance Requirements?
E. What are the Notification, Recordkeeping, and Reporting Requirements?
F. What Are the Title V Permit Requirements?
V. Summary of Comments and Responses
A. Source Category Listing
B. GACT Limits
C. Initial Compliance Requirements
D. Continuous Compliance Requirements
E. Title V Permitting
F. Definitions
G. Cost Impacts
H. Miscellaneous
VI. Summary of Impacts of the Final Standards
A. What Are the Air Impacts?
B. What Are the Cost Impacts?
C. What Are the Economic Impacts?
D. What Are the Non-Air Health, Environmental, and Energy Impacts?
VII. 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does This Action Apply to Me?

The regulated categories and entities potentially affected by the final standards include:

Category	NAICS code [1]	Examples of regulated entities
Petroleum Refineries	324110	Area source facilities that refine asphalt.
Asphalt Shingle and Coating Materials Manufacturing	324122	Area source facilities that manufacture asphalt roofing materials.

[1] 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 affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11559 of subpart AAAAAAA (NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where Can I Get a Copy of This Document?

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

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 1, 2010. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the Clean Air Act (CAA) requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. The EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have a number of small businesses. Determining what constitutes GACT initially involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices employed by those sources are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for certain source categories listed pursuant to section 112(c)(3) and (k) by November 16, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). An additional rulemaking will be published in a separate **Federal Register** notice for the remaining source category due in November 2009.

III. Summary of Major Changes Since Proposal

The final rule contains several revisions and clarifications to the proposed rule made in response to public comments. We explain the reasons for the following changes in detail in the summary of comments and responses (section V of this preamble):

- Revised the emission limits for asphalt roofing manufacturing lines using emissions data supplied by the industry;
- Revised the initial compliance requirements to specify that compliance tests must be conducted while manufacturing the product with the greatest polycyclic aromatic hydrocarbons (PAH) and particulate matter (PM) emissions and to allow facilities to use process knowledge to demonstrate initial compliance for saturator-only lines;
- Revised the initial compliance requirements to clarify procedures for using previously-conducted emission tests to demonstrate compliance;
- Revised the equations for calculating asphalt charging rate and clarified the procedures for determining production rate;
- Revised the continuous compliance requirements to allow for monitoring of parameter ranges (instead of maintaining the parameter below a maximum value) and use of equipment manufacturer specifications when establishing parameter values, and to remove the option to use a continuous emissions monitor (CEMS);
- Revised the continuous compliance requirements to allow facilities to monitor the indicator light of electrostatic precipitators (ESPs) as an option to monitoring voltage;
- Defined PM as the material collected using EPA Method 5A; and
- Added definitions for ''built-up roof operation'' and ''hot-mix asphalt operation'' and clarified the definition of ''saturator'' with regard to impregnation vats.

IV. Summary of Final Standards

A. Do the Final Standards Apply to My Source?

The final subpart AAAAAAA standards apply to each existing and

new area source facility that processes asphalt and/or manufactures roofing products using saturation and/or coating processes that apply asphalt to a substrate. The standards do not apply to research or laboratory facilities, as defined in section 112(c)(7) of the CAA.

B. When Must I Comply With the Final Standards?

All existing area source facilities subject to this final rule are required to comply with the rule requirements no later than December 2, 2010. New sources are required to comply with the rule requirements by December 2, 2009 or upon startup of the facility, whichever is later.

Because the majority of existing sources in this category are already well-controlled, we believe that one year is a reasonable amount of time to allow existing sources to conduct compliance testing and prepare compliance demonstrations showing compliance with the final rule.

C. What Are the Final Standards?

As discussed in section II.C of this preamble, the two production operations for which this category was listed are: (1) Asphalt processing (refining) operations; and (2) roofing product manufacturing operations.

For asphalt processing, the final standards require the owner or operator to limit PAH emissions to 0.003 lb/ton of asphalt charged to the asphalt refining (blowing still) operation. Alternatively, owners or operators may comply with a PM emissions limit of 1.2 lb/ton of asphalt charged to the asphalt refining operation. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the PAH emission limit. The final standards for new refining operations are the same as for existing sources.

For asphalt roofing product manufacturing operations, we examined the process operations and other factors and determined that it was appropriate to establish subcategories that reflect the unique emission characteristic profiles of the different process types (equipment configurations). We developed three subcategories based upon the various process types used in the industry: (1) Production lines that use a coater only, (2) production lines that use a saturator only, and (3) production lines that use both saturators and coaters.

For existing coater-only production lines, the final standards require the owner or operator to limit PAH emissions from all coating mixers and coaters to 0.0002 lb/ton of product manufactured. Alternatively, owners or operators may choose to comply with a PM emission limit of 0.06 lb/ton of product manufactured. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the GACT-based PAH emission limit.

For existing saturator-only production lines, the final standards require the owner or operator to limit PAH emissions from all saturators (and wet loopers) to 0.0007 lb/ton of product manufactured. Alternatively, for saturator-only production lines, owners or operators can comply with a PM emissions limit of 0.30 lb/ton of product manufactured. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the GACT-based PAH emission limit.

For existing combined saturator and coater production lines, the final standards require the owner or operator to limit PAH emissions from all saturators, wet loopers, coating mixers, and coaters to 0.0009 lb/ton of product manufactured. The final standards for combined saturator and coater production lines alternatively allow owners or operators to comply with a PM emissions limit of 0.36 lb/ton of product manufactured. The alternative PM limit ensures reductions in emissions of PAH that are at least equivalent to those achieved through compliance with the GACT-based PAH emission limit.

The final standards for new roofing product manufacturing operations for all subcategories are the same as those for existing sources.

D. What Are the Initial and Continuous Compliance Requirements?

The final standards require an initial compliance assessment of the process emissions or control device outlet concentration to demonstrate initial compliance with the applicable standard, and to establish monitoring parameter values (*e.g.,* temperature, pressure drop) for the process or control device that will be monitored to demonstrate continuous compliance. For PM control devices used on asphalt roofing lines, the final rule allows owners or operators to establish monitoring parameter operating ranges based upon equipment manufacturer guarantees.

For existing sources, the final standards require owners or operators to conduct the initial compliance assessment by May 31, 2011. Owners or operators of new sources are required to conduct the initial compliance assessment by June 1, 2010 or within 180 days after startup, whichever is later.

For existing and new blowing stills and asphalt roofing manufacturing lines, the final standards require owners or operators to demonstrate initial compliance by conducting emission tests or by using the results from an emission test conducted in the past five years that meets the specified criteria in the final rule. Specifically, owners or operators can use the results of the previously-conducted test only if the emission measurements were made using the test methods specified in Table 3 of the final rule. *See* 40 CFR 63.11562(d). Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the emissions test reliably demonstrate compliance despite any process changes. *Id.* For existing and new asphalt processing and asphalt roofing manufacturing lines that do not require a control device to comply with the emission limits, the final rule allows owners or operators to use process knowledge and engineering calculations, instead of compliance test results, to demonstrate initial compliance. For example, an owner or operator could use a mass-balance approach (*e.g.,* based upon asphalt throughput, asphalt content of the product manufactured) to demonstrate that the emission limits would not be exceeded.

Continuous compliance with the final emission limits is demonstrated by monitoring parameters and process conditions established during the initial compliance assessment. The final standards require owners and operators to demonstrate continuous compliance based upon a 3-hour averaging period. If a thermal oxidizer is used to comply with the emission limits, the final standards require that the 3-hour average combustion zone temperature of each affected thermal oxidizer be maintained at or above the operating limit established during the initial compliance assessment. For PM control devices, the final standards require that the average 3-hour pressure drop and inlet gas temperature values be maintained within the range of established values. As an alternative to monitoring temperature and pressure drop, the final rule allows owners or operators to use a leak detection system for a filtration-based PM control device. If an ESP is used as the PM control device, the final standards require that the 3-hour average ESP voltage be maintained at or above the operating value established during the initial

compliance test. As an alternative to monitoring the ESP voltage, the final rule allows owners or operators to monitor the device's indicator and warning lights on the device that signify when the ESP must be cleaned. For other types of control devices, the final standards allow the owner or operator to establish approved monitoring parameters and to maintain the value of those parameters within the operating values established during the initial compliance assessment. In cases where add-on control devices are not needed to comply with the final standards, owners or operators are required to establish a range of operating values for process parameters based upon written equipment manufacturer specifications, verify that the equipment is operating within that range during the initial compliance assessment, and maintain the 3-hour average of those parameters within the established values. During periods of startup and shutdown, the final standards require owners and operators to demonstrate compliance over a 24-hour averaging period. As is explained below, the final rule does not establish separate standards for malfunctions and the 3-hour averaging period applies during such events. Thus, consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the emission standards of this rule apply at all times.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

Affected new and existing sources are required to comply with certain requirements set forth in the General Provisions (40 CFR part 63, subpart A), as identified in Table 5 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Among other requirements, each facility is required to submit an initial notification that complies with the requirements in 40 CFR 63.9(b) of the General Provisions within 120 days of the effective date of the final rule and a notification of compliance status that complies with the requirements in 40 CFR 63.9(h) within 60 days after completion of the compliance assessment. Facilities are also required to submit semi-annual compliance summary reports.

F. What Are the Title V Permitting Requirements?

This final rule exempts the asphalt processing and asphalt roofing manufacturing area source category from title V permitting requirements unless the affected source is otherwise required by law to obtain a title V permit. For example, sources that have title V permits because they are major sources under the criteria pollutant program would maintain those permits.

V. Summary of Comments and Responses

We received a total of six comment letters from industry trade associations, an environmental advocacy group, State/local regulatory agency groups, and a control device equipment vendor on the proposed rule during the comment period. One commenter, an industry trade association, expressed support for the following provisions in the proposal package:

- The roofing line subcategory designations;
- The definition of the affected source for asphalt processing and asphalt roofing manufacturing operations;
- The PAH and PM GACT emission standards for new and existing sources;
- The definitions of ''asphalt flux,'' ''asphalt processing operation,'' and ''blowing still;''
- The use of PM emissions as a surrogate for PAH emissions;
- The use of certain previously-conducted emission tests to demonstrate initial compliance with the emission limitations; and
- The exemption from title V permitting requirements.

We acknowledge the commenter's support for these provisions. Sections V.A. through V.H. contain summaries of the remaining comments that we received and our responses to those comments.

A. Source Category Listing

Comment. One commenter asserted that the Agency used inaccurate PAH emissions data for 1990 to list asphalt processing and asphalt roofing manufacturing area sources under CAA section 112(c)(3). The commenter asserted that urban area source PAH emissions in the industry in that baseline year were significantly lower than EPA's estimates and provided a copy of a report previously submitted to the Agency that the commenter contended supports that assertion. The commenter's report concludes that, by combining asphalt roofing manufacturing and asphalt processing into a single source category and using the outdated data, the EPA's PAH emissions estimate for the two categories is overstated by nearly two orders of magnitude. Based upon this information, the commenter stated that EPA should not be issuing GACT standards for asphalt processing and asphalt roofing manufacturing area sources under CAA section 112(c)(3).

Response. We listed the asphalt processing and asphalt roofing manufacturing source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy. As explained in more detail below, we included this source category on the section 112(c)(3) area source category list based upon emissions data for the 1990 baseline year. The asphalt processing and asphalt roofing manufacturing source category was listed for its contributions toward meeting the requirement that we list sufficient categories and subcategories of area sources to ensure that area sources representing 90 percent of area source emissions of PAH are subject to regulation under CAA section 112.

While Congress required EPA to list sufficient categories or subcategories of area sources to ensure that areas sources representing 90 percent of the area source emissions of the 30 Urban HAP are subject to regulation under section 112 of the Clean Air Act, it left it to EPA's discretion to determine which categories and subcategories of sources to include on the list. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from asphalt processing and asphalt roofing manufacturing area sources in 1990. EPA listed the asphalt processing and asphalt roofing area source category on the basis of that emissions data. EPA continues to believe that it was reasonable to rely on that data and that it acted appropriately in including the asphalt processing and asphalt roofing area source category on the list on the basis of that data.

There is nothing in the comments that persuades EPA that the asphalt processing and asphalt roofing manufacturing area source category should not be included in the source category list. The report submitted along with the comments clearly reflects the Commenter's preference that a different source category, asphalt concrete manufacturing, be included on the list instead of asphalt processing and asphalt roofing manufacturing and that the inclusion of that source category would have also resulted in a cumulative percentage contribution in excess of 90 percent. This, however, misses the point. As stated above, Congress left it to EPA's discretion to

determine which categories and subcategories to include on the list. Congress did not require EPA to establish a rank order of such categories and subcategories and then move from the highest ranking source category or subcategory to lower ranking categories or subcategories until a cumulative total of 90 percent was reached. Thus, as long as EPA had some basis for including a particular category or subcategory of area sources on the list, which is the case here, it can choose to include that category or subcategory even if there are other potential source categories or subcategories that arguably may contribute more to cumulative emissions.

In this particular instance, EPA questions the accuracy of the emission factors used in the report submitted by the commenter. Specifically, the emissions factors in the commenter's report are based primarily on emissions data from 1998 and 1999 (with some reliance on 1994 data). The report takes these emission factors that are based on post-1990 data and applies them to 1990 production rates. As the commenter points out in its comments, PAH emissions in the asphalt processing and asphalt roofing manufacturing industry have declined since 1990. As a result, emission factors developed using emissions data from years after 1990 are likely to underestimate actual emissions in 1990.

Moreover, even if EPA were to accept, for argument's sake, the revised emissions estimates set forth in the report submitted by the commenter, it would, for the reasons described below, continue to believe that the asphalt processing and asphalt roofing manufacturing category belongs on the 112(c)(3) source category list. First, EPA believes that it is most appropriate to consider asphalt processing and asphalt roofing manufacturing as a single source category rather than two separate source categories, as the commenter contends, because a single facility often includes both types of operations. Indeed, 90 percent of the facilities affected by the final rule conduct both asphalt processing and asphalt roofing manufacturing operations at the same site. We also believe that asphalt processing and asphalt roofing manufacturing operations are closely linked, regardless of co-location, because the purpose of blow stills at asphalt processing operations is to prepare asphalt flux, obtained from refineries, for use in manufacturing roofing products (*e.g.,* shingles, roll roofing). Second, while the commenter contends that asphalt concrete manufacturing should be included on the list instead of asphalt processing and asphalt roofing manufacturing, the fact is that, on a per facility basis, the asphalt processing and asphalt roofing manufacturing sources are larger PAH emissions sources than the asphalt concrete industry sources. As a result, EPA's regulation of the 75 sources in the asphalt processing and asphalt roofing manufacturing area source category is far more cost efficient and far more feasible from an implementation perspective than regulating the 3600 facilities engaged in asphalt concrete manufacturing. Finally, as explained above, Congress afforded EPA discretion in selecting the source categories to regulate to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B). Without the asphalt processing and asphalt roofing manufacturing source category, we will not meet this requirement. In conclusion, Congress required EPA to list sufficient categories and subcategories of sources of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 urban HAP are subject to regulation under CAA section 112. EPA has discretion to identify the categories and subcategories on the list and properly included asphalt processing and asphalt roofing manufacturing on the list. Nothing in the comments contradicts this.

B. GACT Limits

Comment. One commenter noted that EPA stated in the proposal notice that ''[w]e believe that all asphalt processing and asphalt roofing manufacturing facilities will be able to meet the proposed standards using existing controls * * *'' and that ''* * * no additional air pollution control devices would be required.'' The commenter was concerned that such proposals are merely paperwork exercises and are not responsive to Congress' intent in establishing the area source program under the Clean Air Act which the commenter believed should result in reductions in emissions from area sources of hazardous air pollution. Moreover, the commenter recommended that, ''* * * in this rule and in future area source proposals, EPA incorporate provisions that will provide additional public health protection from the adverse effects of emissions of hazardous air pollutants from area sources.''

Response. The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (*i.e.,* sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to the area source category's current emission and control status. Such a comparison is flawed.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that sources representing 90 percent of the 30 HAP listed are subject to regulation. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from asphalt processing and asphalt roofing manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources that reflect GACT for the source category. As Congress itself recognized, to qualify as being generally available, a GACT-based standard would most likely be based upon an existing control technology or management practice: ''[A]n equipment standard would require neighborhood dry cleaning establishments to employ the commercially available systems associated with the lowest *measured* emissions * * * S. Rep. 101–128, at 171–172 (emphasis added). Thus, it is both reasonable and consistent with Congressional intent that the GACT-based standards being finalized today codify the use of the existing effective PAH control approach being used by sources in the category. For all of these reasons, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

Comment. One commenter asserted that, although section 112(d)(5) does

authorize EPA to issue GACT standards in lieu of MACT standards, the Agency's decision to do so is subject to familiar administrative law requirements. The commenter maintained that to be non-arbitrary, the decision must—at a minimum—be supported by a rational explanation. The commenter stated that EPA has provided no explanation whatsoever for its apparent decision to issue GACT standards pursuant to CAA section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (3) and, for this reason alone, its decision is arbitrary and capricious.

The commenter also claimed that the proposed standards are based solely on cost and are thus unlawful and arbitrary. The commenter asserted that CAA section 112(d)(5) does not direct EPA to set standards based on what is cost effective; rather, according to the commenter EPA must establish GACT based on the ''methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts.'' The commenter stated that because cost effectiveness is not relevant under CAA section 112(d)(5), the reliance on cost effectiveness as the sole determining factor in establishing GACT renders the proposed standards unlawful.

Response. As the commenter acknowledged, in section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, section 112(d)(5), which is titled ''Alternative standard for area sources,'' provides:

> With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants. *See* CAA section 112(d)(5).

There are two critical aspects to section 112(d)(5). First, section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to section 112(c). The commenter does not dispute that EPA listed the asphalt processing and asphalt roofing manufacturing area source category pursuant to section 112(c). Second, section 112(d)(5) provides that for area sources listed pursuant to section 112(c)(3), EPA ''may, in lieu of'' the authorities provided in section 112(d)(2) and 112(f), elect to promulgate standards pursuant to section 112(d)(5).

Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as maximum available control technology (MACT)). Section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. *See* section 112(d)(3). Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' *See* Webster's II New Riverside University (1994). Thus, section 112(d)(5) authorizes EPA to promulgate standards under section 112(d)(5) that provide for the use of GACT, instead of issuing MACT standards pursuant to section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

The commenter argues that EPA must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. The commenter is incorrect. Had Congress intended that EPA first conduct a MACT analysis for each area source category, Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c), and that is precisely what EPA has done in this rulemaking.

Although EPA need not justify its exercise of discretion in choosing to issue a GACT standard for an area source listed pursuant to section 112(c)(3), EPA still must have a reasoned basis for the GACT determination for the particular area source category. The legislative history supporting section 112(d)(5) provides that GACT is to encompass:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

See Senate Report on the 1990 Amendments to the Act (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category.

Congress plainly recognized that area sources differ from major sources, which is why Congress allowed EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not allow that consideration in setting MACT floors for major sources pursuant to section 112(d)(3). This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states—provide EPA the authority to issue ''[a]lternative standards for area sources.''

Notwithstanding the commenter's claim, EPA properly issued standards for the area source category at issue here under section 112(d)(5) and in doing so provided a reasoned basis for its selection of GACT for this area source category. As explained in the proposed rule and below, EPA evaluated the control technologies and management practices that reduce PAH emissions at asphalt processing and asphalt roofing manufacturing facilities. In its evaluation, EPA used information from an industry survey, discussed options for controlling PAH emissions with the industry trade associations, and reviewed operating permits to identify the emission controls and management practices that are currently used to control PM and PAH emissions.

In our evaluation, we determined that all blow stills used to process asphalt are currently controlled using thermal oxidation. We also found that the majority of roofing manufacturing lines were controlled using some type of PM control device (*e.g.,* fiber-bed filters). Additionally, we determined that, due to market-driven process changes, the majority of roofing manufacturing facilities no longer use organic felt as the substrate for roofing materials. This process change significantly reduced the amount of asphalt used to manufacture a given quantity of roofing products.

EPA disagrees with the commenter's assertions that EPA based its GACT determination solely on its estimate of cost effectiveness and that cost effectiveness is not relevant in determining what constitutes GACT. The Agency's consideration of cost effectiveness in establishing GACT and the Agency's views on what is a cost-effective requirement under section 112(d)(5) are relevant. The U.S. Court of Appeals for the DC Circuit has stated that cost effectiveness is a reasonable measure of cost as long as the statute does not mandate a specific method of determining cost. *See Husqvarna AB* v.

EPA, 254 F.3d 195, 201 (DC Cir. 2001) (finding EPA's decision to consider costs on a per-ton-of-emissions removed basis is reasonable because CAA section 213 did not mandate a specific method of cost analysis). Further, we did not base our GACT determination solely on our estimate of cost effectiveness. Rather, we first carefully evaluated the methods, practices and techniques that are commercially available and appropriate for application by sources in the asphalt processing and asphalt roofing manufacturing area source category. Only then did we consider costs and economic impacts to determine what constitutes GACT for the source category. In doing so, we determined that, because sources in the asphalt processing and asphalt roofing manufacturing area source category currently have relatively low emissions of PAH based upon the use of existing controls, requiring additional controls would result in very high costs for only a modest incremental improvement in control. Finally, we believe the consideration of costs and economic impacts is especially important for determining GACT for the asphalt processing and asphalt roofing manufacturing area source category because of the number of existing sources that would need to retrofit controls on asphalt roofing manufacturing operations if the existing controls on those operations were determined inadequate.

Even though we are not required to provide a specific rationale for why we chose to establish GACT-based standards, rather than MACT-based standards, EPA did in fact provide a rationale for doing so in the proposed rule. In the proposal, we explained that the facilities in the asphalt processing and asphalt roofing manufacturing area source category are already well controlled for PAH, the urban HAP for which the source category was listed pursuant to section 112(c)(3). *See* 74 FR 32826–32828. Consideration of costs and economic impacts is especially important when an area source category is comprised of sources that are already well-controlled. In such circumstances, a MACT floor determination, where costs cannot be considered, could result in very high costs for only a modest incremental improvement in control efficiency for sources in the area source category. EPA concluded that this would be the case were it to establish MACT-based emission standards for the asphalt processing and asphalt roofing manufacturing area source category.

Comment. One commenter stated that EPA did not provide an explanation for its decision to narrowly focus the proposed rule on just PAH emissions. The commenter went on to make the following points. The commenter noted that in the 2003 NESHAP for the asphalt processing and asphalt roofing manufacturing major source category, the EPA stated that the major source category emits a variety of HAP. The commenter added that the preamble to the 2003 major source NESHAP (68 FR 22976, 22976 (Apr. 29, 2003)) stated that approximately 98 percent of emissions from the processing of asphalt and the manufacture of asphalt roofing consist of formaldehyde, hexane, hydrochloric acid (HCl), phenol and toluene. A combination of several different organic HAP comprise the remaining two percent of the total HAP emissions. The commenter said that in 2003, the EPA found that exposure to these HAP could result in both ''chronic health disorders (*e.g.,* irritation of the lung, skin, and mucous membranes, effects on the central nervous system, and damage to the blood and liver) and acute health disorders (*e.g.,* respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea).'' *Id.* The commenter also noted that EPA classified two of the HAP (formaldehyde and polycyclic organic matter (POM)) as probable human carcinogens.

The commenter stated that Section 112(d) requires that emission standards be developed for each HAP listed in section 112(b). Assuming arguendo that the Agency does not have to set separate standards for each HAP when issuing standards under section 112(d)(5), the commenter stated that the Agency still has an obligation to address all the HAP that a category emits when it sets GACT standards. Thus, the commenter asserted that EPA had an obligation to address the HAP emitted by asphalt processing and asphalt roofing manufacturing sources beyond PAH, especially in light of the fact that PAH is such a limited component of the HAP emitted by the source category. Further, the commenter added that the Agency's failure to even consider non-PAH HAP and to explain its failure to address these HAP is arbitrary and capricious.

The commenter also noted that EPA failed to address all sources of HAP emissions in the asphalt processing and asphalt roofing manufacturing source category. The commenter pointed out that EPA noted in the 2003 major source NESHAP that, in addition to the blowing stills and roofing manufacturing operations addressed in the proposed rule, asphalt storage and process tanks, asphalt loading racks, sealant applicators, and adhesive applicators are also sources of HAP emissions. The commenter stated that the Agency's failure to acknowledge these emission sources and consider commercially available technology for reducing emissions from these sources was unlawful.

Response. Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP emitted from area sources that pose the greatest threat to public health in the largest number of urban areas (the ''Urban HAP'') and identify the area source categories emitting such pollutants that are or will be listed pursuant to section 112(c)(3). Section 112(c)(3), in relevant part, provides:

> The Administrator shall * * *, pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section.

Thus, section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 Urban HAP are subject to regulation. Section 112(d)(1) requires the Administrator to promulgate regulations establishing emissions standards for each area source category of HAP listed for regulation pursuant to section 112(c).

EPA identified the 30 Urban HAP that posed the greatest threat to public health in the Integrated Urban Air Toxics Strategy (Strategy). In the Strategy and subsequent **Federal Register** notices, EPA listed the area source categories necessary to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B), and one of those categories was the Asphalt Processing and Asphalt Roofing Manufacturing area source category.

We have interpreted sections 112(c)(3) and 112(k)(3)(B) together to require EPA to regulate only those Urban HAP emissions for which an area source category is listed pursuant to section 112(c)(3), not all urban HAP or all section 112(b) HAP emitted from a listed area source category. As stated above, section 112(k)(3)(B) addresses the strategy to control HAP from area sources in urban areas and the focus of the strategy as it relates to control of area sources is on the 30 HAP that pose the greatest threat to public health in the largest number of urban areas. Section 112(c)(3) specifically references section 112(k)(3)(B) as the basis for selecting area sources for listing to satisfy the Agency's responsibility for regulating urban HAP emissions from area sources.

Under these provisions, area sources categories are listed because they emit one or more of the 30 listed Urban HAP and the Agency has identified the category as one that is necessary to satisfy the requirement to subject area sources representing 90 percent of the area source emissions of the 30 Urban HAP to regulation.

EPA listed the Asphalt Processing and Asphalt Roofing Manufacturing area source category pursuant to sections 112(c)(3) and 112(k)(3)(B), based on the category's emissions of PAH, which is an urban HAP. Thus, consistent with the requirements of sections 112(c)(3) and 112(k)(3)(B), we must regulate the PAH emissions from the Asphalt Processing and Asphalt Roofing Manufacturing area source category, as these are the urban HAP emissions for which the category was listed to meet the 90 percent requirement in sections 112(c)(3) and (k)(3)(B). *See* 112(c)(3) (EPA must ''ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants * * * are subject to regulation.''). We recognize that the source category emits other section 112(b) HAP, including other urban HAP; however, as stated above, sections 112(c)(3) and 112(k)(3)(B) do not require the Agency to regulate the area source category for any HAP other than those for which the category was listed. As to the other urban HAP emitted from this category, we have identified other area source categories that emit these urban HAP and subjecting those area source categories to regulation will satisfy the requirement to subject to regulation area sources that account for 90 percent of the area source emissions of those urban HAP.

While the Agency is not required to regulate all section 112(b) HAP from area sources listed pursuant to section 112(c)(3) and 112(k)(3)(B), section 112 of the CAA does not preclude EPA from regulating other HAP from these area sources at our discretion and in appropriate circumstances. Section 112(d)(5) states that for area sources listed pursuant to section 112(c), the Administrator may, in lieu of section 112(d)(2) ''MACT'' standards, promulgate standards or requirements ''applicable to sources'' which provide for the use of GACT or management practices ''to reduce emissions of hazardous air pollutants.'' This provision does not limit EPA's authority to regulate only those urban HAP emissions for which the category is needed to achieve the 90 percent requirement in sections 112(k)(3)(B) and 112(c)(3). In fact, in two other area source rules, in addition to regulating the urban HAP that were necessary to satisfy the 90 percent requirement in sections 112(k)(3)(B) and 112(c)(3), we regulated additional section 112(b) HAP. Specifically, in the chemical manufacturing area source rule and the paint and allied products area source rule, although not required, we exercised our discretion to regulate other section 112(b) HAP beyond the urban HAP for which the categories were listed under section 112(c)(3) and (k)(3)(B), including non-urban section 112(b) HAP. The chemical manufacturing area source rule and the paints and allied products area source rule both involve specific circumstances which EPA believes justify regulating organic and metal section 112(b) HAP in addition to the specific urban HAP needed to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B), which served as the basis for the listing of the categories. In the chemical manufacturing area source rule, which establishes standards for 9 area source categories, we regulated such HAP because the emission standards designed to control the urban HAP for which the categories were listed were equally effective at removing other urban and non-urban metal and organic HAP, and demonstrating compliance for total HAP was less burdensome than demonstrating compliance for speciated HAP for those sources required to install add-on controls. In the paint and allied products area source rule, we included emission standards for HAP beyond the urban HAP for which the category was listed because the emission standards designed to control those urban HAP would also control other urban and non-urban metal and organic HAP.

As noted above, the asphalt processing and asphalt roofing manufacturing area source category was listed solely due to emissions of PAH. By contrast, both the chemical manufacturing and the paint and allied products area source categories were listed for multiple urban HAP (*i.e.,* 1,3-butadiene; methylene chloride; 1,3-dichloropropene; hexachlorobenzene; acetaldehyde; hydrazine; chloroform; quinoline; ethylene dichloride; and HAP metal compounds (arsenic, cadmium, chromium, lead, manganese, and nickel) for chemical manufacturing, and benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel for paint and allied products). For sources in these area source categories, it was reasonable to develop emission limits for non-urban HAP in part because the cost of estimating compliance for each urban HAP for which the categories were listed was overly burdensome. However, this same rationale is not appropriate in this rule because EPA listed the asphalt processing and asphalt roofing manufacturing source category based on the emissions of a single HAP (PAH). The co-control scenario also plays out differently in the context of the asphalt processing and asphalt roofing manufacturing area source category. Specifically, where an add-on control device like those used by facilities complying with the major source NESHAP (*e.g.,* a thermal oxidizer or a fiber-bed filter) is needed to comply with the final standards for the asphalt processing and asphalt roofing manufacturing area source category, the control device will achieve co-control of certain HAP other than PAH. For example, a thermal oxidizer will effectively control total HAP, total hydrocarbon (THC) and PM emissions and a fiber-bed filter will effectively control PM emissions. An emission limit based on the use of a thermal oxidizer (*e.g.,* a limit on total HAP or total THC) would, however, necessitate all emissions from regulated operations being routed to a thermal oxidizer or similar control device. At present, based on the available information, facilities only use thermal oxidizers to control emissions from asphalt processing operations. Thermal oxidizers are not currently used to control emissions from asphalt roofing manufacturing operations. As a result, such limits would require facilities to retrofit to route emissions from asphalt roofing manufacturing operations to a thermal oxidizer or similar control device. Such retrofits would increase the cost of complying with the standards to a level that is unacceptable for a GACT-based standard. We estimate that 29 existing facilities currently have a thermal oxidizer and the remaining 46 would need to install new controls. Even when assuming a best case scenario, whereby facilities would only need to install new ductwork to route emissions to an existing thermal oxidizer, we estimate that such facilities would have an estimated initial capital cost of $58,000 and annual maintenance costs adding up to $11,000. We believe that these estimates are unrealistically low, however, because the existing thermal oxidizers would also require supplemental fuel, and, in many cases, an upgrade of the control unit, in order to handle the increased emissions loading. We estimate that it would cost an average facility in excess of $1 million to install new thermal oxidation controls, with annual costs of just over

$910,000 per year per facility for fuel and maintenance. In actuality, though, the costs could be much greater depending on the configuration of the facility.

These cost concerns are further exacerbated by the fact that the benefits arising from co-control will be realized without EPA establishing specific emission limits for the co-controlled HAP. We therefore believe that we have appropriately exercised our discretion in regulating only the PAH emissions from the asphalt processing and asphalt roofing manufacturing area source category.

The commenter further asserts that we failed to regulate all sources of HAP emissions. For the reasons described above, this rule establishes emissions standards for PAH only. To the extent the commenter is asserting that we failed to address all sources of PAH emissions, we disagree. We are required to regulate only those sources of PAH emissions that formed the basis of our listing decision. EPA based the listing of the asphalt processing and asphalt roofing manufacturing area source category solely on emissions from asphalt blowing (processing) and saturation of felt (using saturators, wet loopers, and coaters). Based on our review of the record supporting the listing decision, the record does not include emissions from asphalt loading racks, asphalt storage tanks, adhesive storage tanks, adhesive applicators, sealant storage tanks or sealant applicators. As a result, we did not establish PAH emission limits for those sources, as these emission sources were not part of the listed source category.

Comment. One commenter stated that a significant problem with the proposal is that it would establish GACT standards that are actually more stringent—and significantly so—than the MACT standards for the industry. The commenter stated that they know of no other GACT standards that are more stringent than the corresponding MACT standards for the same industry. The commenter asserted that it makes no sense to have smaller area sources subject to more stringent standards than larger major sources. The commenter added that the very term ''maximum achievable control technology'' on its face indicates that the CAA section 112(d)(2) standards should be more stringent—they are the ''maximum achievable'' standards in contrast to the CAA section 112(d)(5) standards that are merely ''generally available.''

The commenter stated that for MACT, CAA section 112(d)(3) provides minimum levels of stringency, also known as the MACT ''floor'' levels. Thus, according to the commenter, the MACT standard for existing sources must be at least as stringent as the performance achieved by the average of the best performing 12 percent of sources in the category. The commenter stated that for new sources, the standard must be at least as stringent as that achieved by the best controlled similar source. In the subpart LLLLL asphalt processing and asphalt roofing manufacturing MACT rulemaking, the commenter noted that EPA concluded only six years ago that the average of the best performing 12 percent (*i.e.,* the 94th percentile of performance) was equivalent to the subpart UU NSPS limits. 66 FR 58617–20 (Nov. 21, 2001) (subpart LLLLL MACT proposal). The commenter stated that there have not been changes in the industry since publication of the final MACT standards in 2003 that would be expected to have rendered the assumptions for the MACT standards invalid. Thus, the commenter asserted that there is no basis for determining that any standards more stringent than the NSPS or MACT standards are ''generally available.''

The commenter stated that ''The legislative history is replete with support for the proposition that GACT standards are to be less stringent than MACT standards. The Senate Report for the 1990 CAA Amendments states that ''[t]he Administrator may require area sources to install MACT, but also has the option to impose less stringent emissions limitations reflecting generally available control technology.'' Senate Report 101–228, in Congressional Research Service, A Legislative History of the Clean Air Act Amendments of 1990 (''A Legislative History'') 8338, 8490 (emphasis added). *See also* floor statement of Sen. Moynahan (''Clearly, this [GACT] requirement is less demanding than the maximum achievable control technology required for major point sources'') (April 3, 1990 Senate floor debate on S. 1630, in A Legislative History 6946, 7083); House Energy and Commerce Committee Markup of H.R. 3030 (The Waxman amendment requires EPA to regulate 90 percent of the area source emissions of each hazardous air pollutant. EPA may elect to establish controls based on ''generally available control technology'' in lieu of the more stringent controls based on ''maximum achievable control technology'' that would apply to major sources.'' (Apr. 12, 1990 Clean Air Facts description of committee markup, in A Legislative History 2446, 2561).

Another commenter added that the preamble did not contain any explanation for EPA's decision to impose more stringent requirements on smaller, lower-emitting facilities than on major sources. The commenter also cited rationale in Senate Report 101–228 that indicates the Congress intended GACT standards for area sources to be less stringent than MACT standards for major sources. The commenter also noted that EPA has taken the position that GACT is a less stringent standard in the preamble to the area source rulemaking for perchloroethylene dry cleaning facilities (58 FR 49354, 49356).

Response. As described in detail below, we disagree with the commenters' basic premise that a GACT-based standard will always be less stringent than a previously-promulgated MACT-based standard, particularly in circumstances such as those here where the relevant MACT-based standard is more than 6 years old. Further, in this particular instance, the major source MACT-based NESHAP and the area source GACT-based standards are not directly comparable because they regulate different pollutants and different collections of process equipment. The MACT standards regulate total HAP with no speciation. The MACT also covers additional process equipment (*i.e.,* asphalt, adhesive, and sealant storage tanks, and adhesive and sealant applicators) that are not covered under the GACT-based standards.

In assessing what constitutes GACT for the asphalt processing and asphalt roofing manufacturing area source category, we evaluated the control technologies and management practices that reduce PAH emissions at the asphalt processing and asphalt roofing manufacturing facilities that compose the source category. In our evaluation, we used information from an industry survey, discussed options for controlling PAH emissions with the industry trade association, and reviewed operating permits to identify the emission controls and management practices that are currently used to control PM and PAH emissions. In our evaluation, we determined that all of the blow stills used by facilities in the source category to process asphalt are currently controlled using thermal oxidation. We also found that the majority of roofing manufacturing lines was controlled using some type of PM control devices (*e.g.,* fiber-bed filters). Additionally, we determined that due to market-driven process changes, the majority of roofing manufacturing facilities no longer use organic felt as the substrate for roofing materials. The process change of no longer using organic felt as a substrate has significantly reduced the amount of

asphalt used to manufacture a given quantity of roofing products. For all of these reasons, it is understandable that the GACT standard for this category is different than the MACT standard. After considering all of this information, we then considered costs and economic impacts in order to determine what actually constitutes GACT for the asphalt processing and asphalt roofing manufacturing area source category.

While MACT-based standards for a given source category would most likely be more stringent than GACT-based standards for the same sources if the standards were developed at the same point in time, that is not the case here. Here, the GACT standards are based upon more recent process equipment, control device, and emissions data that were analyzed to support development of these standards, specifically. In contrast, the MACT standards were based upon data collected in 1995. Additionally, the GACT-based standards focus on the HAP (PAH) and processes (blowing stills and saturators, wet loopers, coaters, and coating mixers) for which this area source category was listed. The MACT-based standards were developed using a floor analysis for total HAP over a wider span of process equipment. Under such circumstances, the previously established MACT standard cannot reasonably be considered dispositive of the question of what constitutes GACT. Rather, as with any GACT determination, in determining what constitutes GACT for the asphalt processing and asphalt roofing manufacturing area source category, we first carefully evaluated the methods, practices and techniques that are commercially available and appropriate for application by sources in the asphalt processing and asphalt roofing manufacturing area source category. We then considered costs and economic impacts to determine what constitutes GACT. The GACT-based standards in this final rule reflect the Agency's determination, based on this evaluation, of GACT for the asphalt processing and asphalt roofing manufacturing area source category.

Comment. One commenter did not believe that the proposed standards represent a GACT level of control because EPA used unrepresentative data, did not account for variability in establishing the emission limits, and determined the emission limits using the average.

In developing the proposed GACT standards, the commenter noted that EPA used data from only one source in each source category. The commenter also stated that not only is the data too sparse, but it is not representative of GACT because the data were collected to support a MACT rulemaking (*i.e.,* the data were collected at the best-controlled sources in the industry). The commenter submitted PM emissions data from member companies for coater-only lines, saturator-only lines, and lines containing coaters and saturators. The commenter noted that there are numerous subpart UU NSPS compliance tests available documenting PM emissions from industry sources. The commenter added that, because the PM data have been collected to demonstrate compliance with air permits and the subpart UU NSPS, the data would meet the quality assurance and quality control standards required by State air pollution control agencies.

The commenter stated that the standards should consider the variability in emissions due to: operational distinctions between different facilities or units (*i.e.,* roofing lines); between-test variability (*i.e.,* variability in measurements made at the same facility or unit at different times); and within-test variability (*i.e.,* measurement variations in individual test runs).

The commenter stated that EPA and the courts have recognized the importance of using representative data and accounting for such variability between facilities, processes, and test results. In *Sierra Club* v. *EPA,* 167 F.3d 658, 665 (DC Cir. 1999), the U.S. Court of Appeals for the DC Circuit stated in a MACT case (under CAA section 129): ''It is reasonable to suppose that if an emissions standard is as stringent as 'the emissions control that is achieved in practice' by a particular unit, then that particular unit will not violate the standard. This only results if 'achieved in practice' is interpreted to mean 'achieved under the worst foreseeable circumstances.' ''

The commenter stated that, in approving EPA's decision to account for variability in a CAA section 112 case by not setting the standards based upon the lowest emission limits, the court correctly pointed out that ''even the best performing sources occasionally have spikes.'' *Mossville Environmental Action Now* v. *EPA,* 372 F.3d 1232, 1242 (DC Cir. 2004). Similarly, the commenter noted that, under the technology-based NSPS, the DC Circuit's decisions ''evince a concern that variables be accounted for, that the representativeness of test conditions by [sic] ascertained, that the validity of tests be assured and the statistical significance of results determined.'' *National Lime Ass'n* v. *EPA,* 627 F.2d 416, 452–53 (DC Cir. 1980). *See also Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 396 (DC Cir. 1973), cert. denied, 417 U.S. 921 (1974) (remanding NSPS in part due to ''the lack of any indication of statistical reliability'' in test results used to set standards).

Moreover, the commenter asserted that a single test almost by definition cannot be representative of conditions found throughout an industry. The commenter said that the DC Circuit has held under CAA section 111, ''a uniform standard must be capable of being met under most adverse conditions which can reasonably be expected to recur * * *'' National Lime Ass'n, 627 F.2d at 431 n.46. *See also* Portland Cement Ass'n, 486 F.2d at 396 (noting industry point that ''a single test offered a weak basis'' for inferring that plants could meet the standards). Without accounting for variation among different emissions tests, the commenter stated that it cannot be determined with a significant degree of statistical confidence that even a single unit will not be able to meet the standard over a reasonable period of time, when one can expect adverse conditions to be present.

The commenter noted that the courts have recognized this same basic principle in reviewing technology-based effluent standards under the Clean Water Act. As the Fifth Circuit stressed in reviewing ''best practicable technology'' or ''BPT'' standards under Clean Water Act section 304(b)(1):

> The same plant using the same treatment method to remove the same toxic does not always achieve the same result. Tests conducted one day may show a different concentration of the same toxic than are shown by the same test on the next day. This variability may be due to the inherent inaccuracy of analytical testing, *i.e.,* ''analytical variability,'' or to routine fluctuations in a plant's treatment performance.

Chemical Manufacturers Ass'n v. *EPA,* 870 F.2d 177, 228 (5th Cir. 1989). The commenter said that the Fifth Circuit upheld the standards because EPA expressly stated that they should be achievable ''at all times apart from instances of upsets,'' and because the Clean Water Act contains an ''upset defense.'' *Id.* at 230. *See also American Petroleum Institute* v. *EPA,* 540 F.2d 1023, 1035–36 (10th Cir. 1976) (''Even in the best treatment systems, changes occur in ability to treat wastes * * * [V]ariability factors present[] a practical effort to accommodate for variations in plant operations''); *FMC Corp.* v. *Train,* 539 F.2d 973, 985 (4th Cir. 1976) (variability factors account for ''the fact that even in the best treatment systems changes continually occur in the treatability of wastes''). *See also* 47 FR 24534, 24546 (1982) (in setting general

pH effluent limitation under the Clean Water Act, EPA pointed out that it ''traditionally has recognized that it must take variability into account in establishing effluent limitations, and in recognition that 100 percent compliance is theoretically impossible, the Agency has generally set daily effluent limitations which would be met approximately 99 percent of the time'').

The commenter noted that EPA pointed out in its brief in the *Sierra Club* v. *EPA MACT* case under CAA section 129 (discussed above), that simply trying to set a technology-based emission standard by considering a very limited dataset ''ignores the critical distinction between an emission level that is 'observed' on a particular occasion versus an emission level the Administrator determines is 'achieved in practice' through performance because it is capable of being met continuously under the range of operating conditions that can reasonably be expected.'' EPA brief at 35. Limited test results—the ''observed'' emissions levels—bear no relationship at all to what a variety of differently configured plants (or even a single unit) can achieve on a continuous basis. This is because each test produces a very limited sample of data. It does not provide a full enumeration of the available data for the unit's performance over a long period of time. *See* Natrella, Environmental Statistics, supra, chapter 1.

The commenter stated that EPA inappropriately ignored basic statistical principles for environmental standard-setting. The commenter said that in any normally distributed set of data, 50 percent of the data points will be higher than the mean. Even assuming that the data were representative, a standard that 50 percent of sources do not meet would lead to a level of control more stringent than that generally available.

The commenter stated that the use of the average uncontrolled emissions derived from a single test at a saturator/wet looper and a single test at a coater/coating mixer at one facility (the Tamko Frederick, MD facility) is inappropriate for setting standards. The commenter further stated that even assuming this is actually a median data point, 50 percent of the emission sources will have emissions higher than this source.

The commenter noted that a paper published in a peer-reviewed journal showed that the emissions from uncontrolled coaters are variable (the standard deviation was 169 percent of the mean). The commenter stated that if the assumption is made that the data are distributed according to the t-Density function, this means that more than 33 percent of sources would be expected to have uncontrolled emissions of greater than 0.83 pounds/ton of product. To meet the 0.03 pound PM/ton of product standard, the commenter said that the cleanest of these sources (at 0.83 lbs/ton) would have to have unvarying emissions, and continuous control efficiencies of greater than 96 percent efficiency.

The commenter also stated that EPA has inappropriately used average values in converting the emissions data to pounds of PM emitted per ton of product manufactured and in assessing the removal performance of high-efficiency air filter (HEAF) in calculating the proposed standards.

The commenter suggested that a valid and reasonable approach to calculate representative emissions for such a small data set is to add two standard deviations to the mean (x) of the 3 stack testing runs. Assuming data are normally distributed, the commenter said that approximately 97.8 percent of sources in a normally distributed population would fall below this x + 2 standard deviations envelope.

The commenter stated that because of EPA's flawed analysis, the proposed PAH and PM GACT emission standards for asphalt roofing manufacturing are too stringent and that EPA's assertion that the GACT standards can be met is incorrect.

Response. We agree with the commenter that, as a general matter, it is desirable to have as robust a data set as possible when establishing emission limits. We also note, however, that EPA must often work with the data it has even though we might prefer to have additional data. We had a reasonable set of data upon which to base the proposed rule and it is within our discretion to determine whether it is appropriate to seek additional data before proposing to take a particular action. *See, Natural Resources Defense Council* v. *EPA,* 529 F.3d 1077 (D.C. Cir. 2008) (Recognizing that it is within EPA's discretion to determine when it is appropriate to rely on existing data rather than exercising its authority under section 114 of the Clean Air Act to obtain additional or new data.) In addition to actually having sufficient data upon which to base the proposed rule, we faced time constraints that precluded obtaining even more data due to the fact that we were trying to meet a court-ordered deadline for issuing the proposed rule. Finally, the rulemaking process itself is one of the primary ways in which EPA obtains relevant information.

We agree with the commenter that additional roofing line emissions data would be helpful in establishing the GACT-based limits for this area source category. We also agree that variability in emissions is one of several important factors that need to be considered in establishing the GACT limits and that we had a less than desirable amount of data with which to consider statistical variability at proposal. The additional data provided with the industry comments, in combination with the data EPA relied on in developing the proposed rule, provides a robust data set for use in assessing both the actual performance of sources and the variability in that performance with the result that the final emission limits will be more statistically sound than those contained in the proposed rule. Consequently, the final GACT-based limits have been revised to take into account the additional data submitted by the commenter for asphalt roofing lines. Additionally, we considered the standard deviation of the data in establishing the revised emission limits. We are adding one standard deviation to the average of the data to account for variability. We considered adding two standard deviations to the average but we did not believe this approach was representative of GACT because the resulting emission limits were above the limits that most facilities already achieve. For the combined coater/saturator roofing lines, we are establishing the emission limits as the sum of the emissions limits for the coater-only and saturator-only lines. We used this approach for the combined coater/saturator roofing lines because the emissions are additive (*i.e.,* the process units are in series).

The revised GACT limits for new and existing coater-only production lines are 0.0002 lb PAH/ton of product manufactured (or 0.06 lb PM/ton of product manufactured). For new and existing saturator-only production lines, the revised GACT limit is 0.0007 lb PAH/ton of product manufactured (or 0.30 lb PM/ton of product manufactured). For new and existing combined saturator and coater production lines, the revised GACT limit is 0.0009 lb PAH/ton of product manufactured (or 0.36 lb PM/ton of product manufactured).

C. Initial Compliance Requirements

Comment. One commenter contended that EPA proposed a very short compliance deadline for existing sources—only one year from issuance of the final rule. *See* section 63.11560(a). The commenter noted that the proposed one-year compliance deadline is premised upon EPA's assumption that sources will not have to install or modify air pollution control equipment

to meet the standards. The commenter stated that this assertion is not true; however, as shown by the subpart UU NSPS test data in a report submitted by the commenter, a number of facilities have been operating above the proposed PM standards in the GACT proposal. Thus, according to the commenter, contrary to the proposal's justification, if the final standards are anywhere near the level of the proposed standards, the commenter stated that a number of facilities will need to make significant improvements to and/or reconstruct existing PM control equipment or install new equipment altogether to meet the proposed GACT limits.

The commenter stated that NSPS subpart UU and MACT Method 5A testing data show that 20—50 percent of the potential GACT regulated sources surveyed by EME Solutions would be in non-compliance with the proposed GACT limits. Given that these sources will have to perform engineering testing(s) to assess compliance status, analyze results, design/develop solutions to the reason(s) for potential noncompliance, fabricate and install the solutions, and then perform compliance testing; eighteen months is much too short a time period.

The commenter noted that the proposal also recognizes that there are uncontrolled sources in the industry. For example, many coating mixers are not currently controlled. Even if a facility has existing PM control equipment, the commenter contended that it will be necessary to install ducting to vent the currently-uncontrolled affected sources to the controls.

The commenter also noted that many States require a construction permit to make modification to emissions control technology already in place. The permitting alone can take 9 months or longer.

In addition, the commenter stated that the subpart LLLLL MACT standards provided a 3-year compliance date for existing sources, even though they were less stringent than the proposed GACT standards. The commenter said that there is no logical rationale for having a three-year compliance date for the MACT standards yet only a one-year compliance date for more stringent GACT standards. The commenter stated that for all these reasons, the final rule should provide that a facility has three years from the date of issuance of that rule to comply with the GACT standards.

For all these reasons, the commenter believed that a three-year compliance deadline is appropriate, and that the proposed section 63.11560(a) should be amended by substituting the term ''three years'' where ''one year'' is currently found in the bracketed language.

Response. We disagree with both the commenter's basic premise that existing sources will need three years to comply with the final standards and the assumptions underlying that premise. The commenter assumes that either new control devices will need to be installed, or existing controls upgraded, to comply with the PAH or PM emission limits. We believe that this assumption is incorrect. In this final rule, we revised the emission limits based on our assessment of additional data and to account for variability. As a result, we believe that no new add-on controls will be needed to comply with the final GACT standards. Consequently, we believe that the proposed compliance deadline of one year is adequate. If an owner or operator believes that additional time beyond the one year compliance period is needed to install controls, the owner or operator can request a compliance extension from the Administrator (or a State with an approved title V permit program), as authorized by CAA section 112(i)(3)(B) and specified in section 63.6(i)(4)(i)of the NESHAP General Provisions.

Comment. One commenter noted that the deadline for conducting performance tests for existing sources stated in the proposal preamble was incorrect because it said that the performance test must be conducted within 180 days after publication of the final rule in the **Federal Register**, rather than 180 days after the compliance date as specified in the regulatory text. The commenter said that the preamble to the final rule should clarify that the preamble to the proposal was in error because the rule language specifies that existing facilities must demonstrate initial compliance within 180 calendar days after the compliance date.

The commenter also noted that EPA uses multiple terms for the same requirement (*i.e.,* ''performance testing,'' ''compliance testing''). The commenter asserted that the use of multiple terms for the same requirement can cause confusion when interpreting the regulatory requirements. The commenter recommended that EPA refer to this testing as ''compliance testing'' throughout the final GACT rule.

Response. We agree with the commenter and have corrected the inconsistencies in the final rule.

Comment. One commenter stated that either one or both of the asphalt density calculations have been improperly derived. The commenter said that either the calculations in English units or in metric units are inaccurate; as they do not give the same answer after the unit conversions are made. The commenter requested that EPA revise these equations as appropriate.

Response. We agree with the commenter and we have corrected the English-unit values for the constants K_1 and K_2 in the asphalt density equations of the final rule.

Comment. One commenter believed that the requirement in the proposed rule (section 63.11562(h)(1)) to conduct the compliance tests under conditions that represent normal operation and not during periods of startup, shutdown, or malfunction is overly broad. The commenter stated that there can be a significant range of ''normal operation,'' and the requirement as stated can lead to confusion among regulators and the regulated community.

The commenter added that some asphalt roofing manufacturing facilities would find it impossible to meet the proposed requirement to manufacture a certain product during compliance testing because they do not manufacture such products. The commenter noted that the proposal also differs from the approach taken in the subpart LLLLL MACT rule. The commenter suggested that the final rule require that the test be performed while manufacturing the roofing product that is expected to result in the greatest amount of HAP emissions.

Response. We agree with the commenter's suggestion that compliance tests be performed while manufacturing the roofing product that is expected to result in the greatest amount of PAH emissions. As a result, the final rule specifies that initial and subsequent compliance tests must be conducted while manufacturing the product that has the highest PAH and PM emissions. We have also eliminated the requirement that compliance tests be conducted under conditions that represent normal operation and not during periods of startup, shutdown or malfunction. We believe that this change addresses both aspects of the comment. Requiring that the compliance test be conducted while manufacturing the product that has the highest PAH and PM emissions eliminates the need to specifically reference normal operating conditions. We are appropriately requiring compliance testing during those periods when the facility is manufacturing the product that has the highest PAH and PM emissions.

Comment. One commenter stated that it would be helpful if EPA explained how the production rate is determined. The commenter questioned if the production rate was based on actual

daily production, monthly production, the daily average of monthly production or some other calculation. The commenter also questioned how the production rate would be determined in plants that run continuously, so that production spans more than one calendar day.

Response. The production rate to be used in determining compliance with the asphalt roofing manufacturing emission limits is the production rate at which the roofing line was operating during the compliance test. If a facility is demonstrating initial compliance with the emission limits using the average of three 1-hour emission tests, the production rate used for the compliance demonstration would be the average rate over the 3-hour period (in terms of pounds of product manufactured). The final rule clarifies that the production rate used for determining compliance must be the average production rate utilized during the compliance test.

Comment. One commenter supported EPA's decision to set the PM standards based upon filterable PM emissions, as is clear from the choice of Method 5A to measure PM emissions. The commenter noted that the data upon which the standards were based were of filterable PM emissions, so it would be inappropriate to include condensable particulate for compliance purposes. The commenter asserted that doing so would be inconsistent with the basis of the standards.

The commenter believed that the preamble to the final rule should make it clear that in measuring PM emissions, the rule contemplates only filterable PM (the ''front half''), and that it would be inappropriate to also require measurement of condensable PM (the ''back half''). The commenter also recommended adding a definition for PM to section 63.11566. The commenter said that the definition should state that ''Particulate matter (PM) means the filterable particulate matter as measured using the front half of Method 5A.'' Should States require that the front half and back half meet these stringent standards, this would result in a regulation far stricter than that mandated by the CAA. The commenter stated that facilities might be required to install thermal oxidizers to comply, a decision that would result in increased emissions of greenhouse gases to reduce already low emissions of PAH.

Response. The data upon which the alternative PM emission limits are based were collected using EPA Method 5A of Appendix A of 40 CFR 60 (Determination of Particulate Matter Emissions from the Asphalt Processing and Asphalt Roofing Industry). Using Method 5A, PM in vent gas samples taken from the source is collected on a glass fiber filter maintained at a temperature of 42 ± 10 °C (108 ± 18 °F). The PM mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water. Consequently, we agree with the commenter that it would be inappropriate to establish emission limits that include contributions from PM that is captured in the sampling train downstream of the Method 5A filter since we do not have data that reflect those contributions. Therefore, for purposes of this final rule, we are defining PM to include any material determined gravimetrically using EPA Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing And Asphalt Roofing Industry (40 CFR 60, Appendix A).

Comment. One commenter noted that the proposal allows the use of the results of performance testing conducted during the past five years to show compliance and indicates that a source must be able to demonstrate that ''the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes.'' The commenter requested further explanation of this provision, because it is likely that most process adjustments would trigger a re-test.

Another commenter stated that the rule should specify that only emission increases resulting from a process change that is above a de minimis level would prevent a previous test from being used.

Response. We clarified the final rule preamble by removing the term ''with or without adjustment'' because that language was unclear. While we agree that there are many types of process changes that could increase PAH and PM emissions such that the previously-conducted test would not be valid, we believe that some changes would not invalidate the results of the previously-conducted test.

We included the option to use existing tests to provide flexibility to the affected facilities. We intend that it is the responsibility of the owner or operator to demonstrate that the process adjustment or change did not invalidate the results of the previously-conducted test. Consequently, we are not including de minimis emissions levels in the final rule.

Comment. One commenter noted that some facilities have conducted required PM compliance testing under various state-managed air permit programs. The commenter said that, in some cases, the methodologies used in these tests are somewhat different than Method 5A. However, the commenter noted that in all cases the methods are approved by a State agency prior to use and typically are carefully evaluated by state experts. The commenter asserted that preventing a facility from using a legitimate, accepted test previously used to establish compliance will result in unnecessary costs and potential conflicts with existing, state-issued, air permit terms and conditions. The commenter asserted that in this scenario requiring the prior test to conform exactly to Method 5A does not provide any additional benefit to the environment, and it merely adds cost, uncertainty and confusion.

Response. We disagree with the commenter that the final rule should provide a blanket allowance for the use of state-approved test methods in lieu of EPA Method 5A. The final rule, through reference to the NESHAP General Provisions, allows owners or operators to petition the Administrator to use alternative test methods and procedures. The EPA retains the authority to approve alternative test methods based on site-specific information. This mechanism can be used to obtain approval to use the results of a previously conducted test, as well as to obtain approval to use an alternative test method in the future.

Comment. One commenter supported EPA's decision to allow facilities to use ''process knowledge and engineering calculations'' in lieu of a performance test to demonstrate initial compliance at a roofing line that does not include a saturator. The commenter noted that companies often have the necessary information and data to show that they will be in compliance with the emission standards if they operate their plants in such a way as to meet specified parameters. However, the commenter questioned why the option was limited to roofing lines that do not include a saturator. The commenter noted that the proposal offers no explanation for this limitation. The commenter asserted that the same principles apply to roofing lines with saturators and asphalt processing operations.

Response. In the proposal, we limited the option to use process knowledge and engineering calculations because we believed that a coater-only line was the only equipment configuration that could potentially demonstrate compliance without using an add-on control device. However, we agree with the commenter that the technical basis for allowing the option does not

preclude application of the option to lines containing saturators. Therefore, the final rule does not limit to coater-only lines the use of process knowledge and engineering calculations, in lieu of an emissions test, to demonstrate initial compliance. However, we are clarifying that the option is applicable only to roofing lines that do not need a control device to comply with the GACT limits.

D. Continuous Compliance Requirements

Comment. Two commenters stated that the pressure drop monitoring requirement for control devices in the final rule should specify that the pressure drop must be maintained in the range established during the initial compliance test, rather than below a maximum limit. The commenters noted that if the filter develops a tear or it is removed after the initial test, the pressure drop would decrease. In this scenario, the commenters said that the filter removal or tear would not cause a violation of the operating limit but the air pollution control device would not be operating properly. A third commenter noted that filters become more efficient and remove more particulates as their differential pressure increases.

Another commenter stated that as long as the ability of the blower to move air is not impeded (*i.e.,* as long as the operating limit of the technology is not exceeded), increased pressure drop actually improves PM removal efficiency. The commenter said that the key to PM filtration technology is not the pressure drop but the velocity of air moving through the capture and control system. The commenter said that pressure drop is actually a surrogate for air flow measurement. The commenter stated that the design maximum pressure drop is based on the ability of the blower providing air flow for capture of the emissions at the source (the air flow captures the PM emissions and transports the PM to the filtration). The commenter noted that the proposed approach of maintaining the pressure drop below a maximum level is contrary to the way filtration-based PM control technology used in asphalt roofing lines works.

Response. We agree with the commenters that requiring that the pressure drop be maintained within a predetermined range and monitored to ensure that this is the case is a better indicator of control system performance than requiring the pressure drop be maintained below a maximum level. The final rule, therefore, specifies that the pressure drop and temperature must be maintained within the range established by the initial compliance assessment.

Comment. One commenter recommended that the pressure drop temperature compliance parameters be based upon the specifications of the manufacturer of the filtration technology. The commenter said that many years of Method 5A compliance testing has demonstrated that as long as the inlet emissions stream does not exceed the manufacturer's temperature and pressure drop limits, and the control technology is operated as specified by the manufacturer, the technology will remove the PM from the stream as guaranteed. The commenter stated that many States have recognized the validity of this approach to deliver compliance with PM emissions limits by requiring that, in both construction and operating permits, emissions sources operate control technologies as per manufacturing requirements. The commenter said that language in the permit either incorporates or references the manufacturer's written operating requirements as compliance parameters.

The commenter stated that limiting the allowable pressure drop to levels below manufacturer's guaranteed performance limits will force facilities to replace and dispose of expensive filtration media well before the end of its guaranteed performance which would result in the increased generation and disposal of solid wastes, with no net increase in reduction of PM and PAH emissions. Also, the commenter said that if the compliance test did not occur late in the expected life of the filter media, the pressure drop measured will be low because the pressure drop is lower for new filtration media than for old filtration media.

The commenter added that the inlet temperature to the filtration technology is dominated by ambient conditions (*e.g.,* when outside temperatures are high, the inlet temperatures of emissions stream to the filtration technology will be high). Thus, the commenter said that if a facility cannot time the compliance test to occur during the hottest time of the year, the source will surely experience higher inlet temperatures during high temperature time periods. The commenter stated that member companies have already experienced this problem in operating under the subpart LLLLL asphalt processing and asphalt roofing manufacturing MACT. The commenter noted that facilities in the industry have received notices of violations for inlet temperatures that exceeded those measured during the performance test, then re-tested at the elevated temperature. The commenter said that these re-tests showed that they still did not exceed the MACT PM emission limits. The commenter also provided a graphical figure that shows a consistent correlation between temperature and emissions does not exist.

The commenter recommended that facilities be allowed two options for establishing and monitoring pressure drop and temperature in the final rule. Under the commenter's first option, the parameters would be based upon manufacturer's specifications. The source would conduct an initial compliance test. The PM emissions from the control device would need to be shown to be below the final GACT limits. As long as the pressure drop was below the manufacturer's requirements, the source would be considered to be in compliance with the pressure drop compliance parameter. Under the commenter's second option, the parameter values would be established as under the proposal, but a measurement that did not exceed that value by a certain percent would not be considered to be a deviation (the commenter suggested 30 percent for pressure drop and 10 percent for temperature). The commenter stated that EPA has allowed a similar buffer over parameters measured during the performance test in existing MACT standards, including Subpart N for Chromium Electroplating, at section 63.343, allowing a buffer on differential pressure, and Subpart NNN for Wool Fiberglass, at section 63.1382, allowing production rate to exceed 20 percent above the tested rate for up to 10 percent of the operating time in a semiannual period.

Another commenter, a control device equipment vendor, asserted that filters will perform adequately when operated within the design and pressure limits imposed by the manufacturer. The commenter added that filtration equipment will operate adequately at temperatures within the limits specified by the equipment manufacturer.

Response. We agree with the commenters that equipment manufacturer specifications for filter media performance are appropriate for use in establishing monitoring parameter ranges, particularly considering the difficulty in conducting emission tests that capture the performance of the control device at the high and low end of its operating range. Consequently, we are adopting the commenter's first option in that the final rule allows owners or operators to use equipment manufacturer performance specifications for filter media in establishing monitoring parameters.

Comment. One commenter was very concerned about the way the proposal would have facilities set their compliance parameter limits for pressure drop and temperature through an initial compliance test. The commenter believed that EPA's proposed approaches lack a technical basis and would result in numerous potential violations of the operating limits even when PM and PAH emissions are well below the emission standards. The commenter suggested alternative methodologies that are more appropriate for establishing parameter limits.

The commenter noted that the proposal would treat all ''deviations'' from the operating parameter limits (*i.e.,* all exceedances of parameter limits) as potential violations of the emission standards. The commenter thought that this approach was excessively harsh, particularly because several factors make it almost certain that established operating parameter limits will be exceeded at times even when a facility is not exceeding the GACT emission standards, and is operating its processes and control equipment well.

For example, the commenter stated that an exceedance of a temperature parameter limit does not mean that a facility is exceeding the emission standard; the ambient temperature has a significant effect on the temperature monitored and the amount of emissions is actually controlled by the temperature of the asphalt in the coating mixer, coater, and/or saturator. For that reason, the commenter noted that the preamble to the Subpart UU (NSPS for asphalt processing and asphalt roofing manufacturing) states that ''periods of temperature excursions * * * would not, of themselves, constitute a violation of the numerical emission limits. The commenter noted that even if the temperature is measured at the coater or saturator, an exceedance of the temperature parameter limit does not mean that the source is exceeding the standards.

The commenter asserts that the same is true for deviations from a set pressure drop parameter limit. As discussed above, it would not be at all surprising for a roofing line to exceed its pressure drop limit but still emit fewer PM or PAH emissions than the actual emission standard allows.

Consequently, the commenter stated that EPA should follow an approach similar in some ways to one that EPA established in its subpart NNN fiberglass MACT standards. The subpart NNN wool fiberglass standards consider whether an affected source is operating outside of its parameter limits for more than 5 percent of the time during a 6-month block reporting period. The commenter believes that EPA should borrow from this approach, and require that the facility conduct a new compliance test if a roofing line has operated outside of the established parametric limits, as we have proposed them, for more than 5 percent of the time in any semiannual reporting period. The commenter said that this would essentially be a combination of the approaches taken by the wool fiberglass MACT standards and the subpart UU NSPS for asphalt roofing manufacturing. If the re-test shows the line to be emitting more PAH or PM than the standard allows, commenter said that the facility could be judged to be in violation of the GACT standard. If the re-test shows that emissions do not exceed the standard, commenter said that there would be no violation.

Response. We acknowledge the difficulty in establishing appropriate monitoring parameter ranges for filtration-based PM control devices. As noted in earlier responses to comments above, the final rule allows owners or operators to establish a range of parameter values for monitoring using manufacturer performance specifications. The EPA believes that allowing the use of manufacturer specifications provides owners or operators sufficient flexibility in establishing appropriate parameter ranges. Consequently, we are not including a re-test provision in the final rule. The parameter ranges established by the facility and approved by the delegated authority are not-to-exceed values. A parameter exceedance would be a violation of the monitoring requirements but not necessarily a violation of the emission limits. Additionally, we are not including the re-test provision because we do not believe it is possible in all cases to replicate the conditions that caused the exceedance during a re-test.

Comment. One commenter noted that some of the ESP units currently in operation in the industry are not provided with voltage meters, nor are they easily modified to add meters for the voltage reading. The commenter said that such ESPs are typically provided with a green indicating light. The commenter said that this light is used to assess the operation of the unit and determine when cleaning is needed. The commenter added that the light burns a solid green during normal operation and the light flashes as the cells gradually become dirty; the dirty cells are then replaced with clean spares.

The commenter stated that contractors have been contacted to provide proposals to modify the existing units to add the required voltage indicators. The commenter said that current estimates are around $50,000 to modify the exiting units to add voltage meters and another $25,000 to $50,000 to add controls to automatically provide the 3-hour average voltage (cost varies depending upon the current automation capability of a facility). The commenter said that the high cost of these modifications is not reasonable, given that the use of the indicating light ensures that the ESP will operate properly. The commenter therefore believed that routine monitoring and logging of the ESP monitoring light is the only reasonable method to verify the operation of an ESP that does not have voltage meters and that EPA should allow this method of compliance.

Response. We agree with the commenter that requiring retrofits for voltage monitors is not cost efficient. We also believe that monitoring the ESP instrumentation (*e.g.,* indicator light) provides sufficient monitoring of the ESP performance. Therefore, the final rule allows owners or operators to monitor the ESP instrumentation as an option to monitoring voltage. Additionally, the final rule specifies that failure to service the ESP within one hour of the potential problem is an exceedance of the monitoring standards, which is consistent with previously promulgated area source rules (*e.g.,* area source NESHAP for iron and steel foundries, and area source NESHAP for aluminum, copper and other nonferrous foundries).

Comment. One commenter stated that CEMs are not suitable for asphalt fumes for continuous sampling of PM. The commenter noted that EPA Method 5A is used for stack PM sampling of asphalt fumes and Method 5A requires that the emission stream be cooled to allow the fume aerosols to condense and this PM portion is then recovered from the sample train with an after test solvent wash. The commenter stated that a continuous analyzer does not exist that will perform this PM sampling.

Response. We agree with the commenter and the CEMS option has been removed from the final rule.

Comment. One commenter supported the proposed provision that, for periods of startup and shutdown, would allow owners and operators to demonstrate compliance with the emission standard over a 24-hour averaging period. The commenter advocated, however, that EPA adopt a similar 24 hour averaging approach for determining compliance with the temperature requirements of the rule. Another commenter expressed concerns with the proposed provision

that, for periods of startup and shutdown, allows owners and operators to demonstrate compliance with the emission standard over a 24-hour averaging period. Specifically, the commenter expressed concern regarding the public health impacts of excess emissions during SSM episodes.

Response. We appreciate the one commenter's support of the provision that, for periods of startup and shutdown, allows owners and operators to demonstrate compliance with the emission standard over a 24-hour averaging period. However, we reject the commenter's suggestion that the 24-hour averaging period be extended to temperature. As stated elsewhere in this preamble, we have modified the rule to require that the owner/operator establish a temperature range for the inlet gas temperature to the PM control device during the initial compliance assessment and to then maintain the 3-hour average inlet gas temperature within that range during operations. We believe that these changes, which allow the owner/operator to establish a temperature range, obviate any need for a longer averaging time for temperature.

We proposed the use of a 24-hour averaging period for determining compliance with the emission standards to account for emissions generated during periods of startup and shutdown based on the format we chose for the emission standards, *i.e.,* lbs of emissions per ton of product produced. During periods of startup and shutdown, the process will continue to produce emissions. Even though emissions during such periods will be less than those that occur during normal operations when measured on an hourly basis, *i.e.,* pounds of emissions per hour of operation, production during such periods will be very limited. As a result, it will be very difficult, if not impossible, to demonstrate compliance with a standard stated in terms of pounds of emissions per ton of product produced if a 3-hour averaging period is used. Specifically, emissions generated during periods of startup and shutdown will be less on an hourly basis than those generated during normal operations for a number of reasons. First, during periods of startup, the temperature of the asphalt is raised until it reaches the optimal temperature for use when producing product. Similarly, during periods of shutdown, the temperature of the asphalt is being reduced from the temperature which is optimal for production. As the temperature of the asphalt increases, the rate of volatilization also increases, resulting in increased PAH emissions as measured on a pounds per hour basis. As a result, during startup, PAH emissions, as measured on a pounds per hour basis, increase until the temperature of the asphalt reaches the optimal temperature for production after which the temperature is maintained at a steady state. During shutdown, the reverse process occurs, *i.e.,* as the process is shut down, the asphalt cools, the rate of volatilization decreases and hourly PAH emissions decrease. Second, during startup and shutdown, the asphalt usage rate, and hence the hourly PAH emission rate, fluctuates. During startup, the asphalt usage rate gradually increases until it reaches the rate present during normal production. As a result, during startup, the hourly PAH emission rate gradually increases until it reaches the rate that exists during periods of normal production. During shutdown, the reverse occurs, *i.e.,* the hourly asphalt usage rate gradually decreases from the rate present during normal production. Thus, except for the very start of the shut-down period, the hourly PAH emission rate is lower than during periods of normal production. The rate of production, *i.e.,* the amount of product produced on an hourly basis, also fluctuates during periods of startup and shutdown. At the commencement of startup, no product is being produced as the asphalt is being brought up to the proper temperature for normal production. The rate of production then gradually increases until the process reaches, and is maintained at, the rate of normal production. During shutdown, the rate of production is gradually reduced from its normal rate to zero. Thus, in light of the production-based format of the standard and the emission characteristics described above that occur during startup and shutdown at asphalt processing and asphalt roofing manufacturing facilities, we concluded that it was appropriate to provide a longer averaging period for determining compliance during periods of startup and shutdown. We chose a 24-hour averaging period because, based on the exercise of our best engineering judgment, we determined that this was an appropriate period since the record indicates that the startup and shutdown processes can take up to 9 hours to complete. We also considered establishing a 16-hour averaging period as this represents two normal 8-hour shifts, but concluded that this would not provide adequate time for conditions to normalize. The final rule, therefore, allows sources to determine compliance with the emission standard based on a 24-hour averaging period, as opposed to a 3 hour period.

We acknowledge the one comment regarding the health concerns associated with emissions that are generated during start-up and shut-down events; however, the GACT standards are technology-based standards as opposed to health- or risk-based standards. For the reasons described above, we think a 24-hour averaging period during periods of startup and shutdown is reasonable and the commenter has provided no evidence to the contrary.

In the proposed rule, we proposed to also apply the 24-hour period for measuring compliance to malfunction events. We are not adopting this approach in the final rule. Rather, the final rule requires compliance with the standard based on a 3-hour average at all times, except as explained above, for periods of startup and shutdown, in which case the rule provides that owners and operators demonstrate compliance with the standard over a 24-hour averaging period. In re-examining the record for this rulemaking, we recognized that the data in the record supporting a longer averaging period related solely to startup and shutdown events. Moreover, in contrast to startup and shutdown events which are routine and distinct operating modes, a malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' 40 CFR 63.2. As discussed above, EPA has properly accounted for different periods of operation, including periods of startup and shutdown, in establishing the standards in this rule. Since a malfunction is not a distinct operating mode, malfunction emissions do not need to be factored into the development of CAA section 112(d) standards, which, once promulgated, apply at all times. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008). Thus, the final rule does not establish a different averaging period for use in measuring compliance during malfunction events. Further, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take into account malfunctions in setting CAA section 112(d) standards. Because, by definition, malfunctions are sudden and unexpected events, it would be difficult to set a standard that would account for the myriad of different emissions that could occur during malfunctions. In addition, the type, frequency, and duration of the malfunctions may differ significantly between sources. Finally, setting an emissions standard that accounts for all

different potential types of malfunctions would allow a source to emit excessive quantities of uncontrolled pollution and would not provide an incentive for sources to minimize the occurrence of malfunctions.

E. Title V Permitting

Comment. One commenter argued that the Agency's proposal to exempt the asphalt processing and asphalt roofing manufacturing area source category from title V requirements is unlawful and arbitrary. The commenter stated that section 502(a) of the CAA authorizes EPA to exempt area source categories from title V permitting requirements if the Administrator finds that compliance with such requirements is ''impracticable, infeasible or unnecessarily burdensome.'' 42 U.S.C. section 7661a(a). The commenter noted that EPA did not claim that title V requirements are impracticable or infeasible for any of the source categories it proposes to exempt, but that EPA instead relied entirely on its claim that title V would be ''unnecessarily burdensome.''

Response. Section 502(a) of the CAA states, in relevant part, that:

> * * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations. *See* 42 U.S.C. section 7661a(a).

The statute plainly vests the Administrator with discretion to determine when it is appropriate to exempt non-major (*i.e.,* area) sources of air pollution from the requirements of title V. The commenter correctly noted that EPA based the proposed exemptions solely on a determination that title V is ''unnecessarily burdensome,'' and did not rely on whether the requirements of title V are ''impracticable'' or ''infeasible'', which are alternative bases for exempting area sources from title V.

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are ''impracticable, infeasible *or* unnecessarily burdensome.'' *See* CAA section 502 (emphasis added). If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word ''and,'' in place of ''or.'' For the reasons explained in the preamble to the proposed rule, we believe that it is appropriate to exempt sources in the asphalt processing and asphalt roofing manufacturing area source category, which are not otherwise required to have a title V permit, from title V permitting and, on that basis, have retained the exemption in the final rule.

Comment. One commenter stated that in order to demonstrate that compliance with title V would be ''unnecessarily burdensome,'' EPA must show, among other things, that the ''burden'' of compliance is unnecessary. According to the commenter, by promulgating title V, Congress indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter maintained that the title V requirements provide many benefits that Congress viewed as necessary. Thus, in the commenter's view, EPA must show why, for any given category, special circumstances make compliance unnecessary. The commenter believed that EPA has not made that showing for any of the categories it proposes to exempt.

Response. The EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. *See* CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. *See* 70 FR 75320, December 19, 2005 (''Exemption Rule''). In addition to interpreting the term ''unnecessarily burdensome'' and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' *See* 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together, rather than on an individual basis, support an exemption from title V for a particular source category.

The commenter asserts that ''EPA must show * * * that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. The EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the July 9, 2009 proposed rule for the asphalt processing and asphalt roofing manufacturing area source category. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the asphalt processing and asphalt roofing manufacturing area source category and, on that basis, proposed to exempt the

category from title V. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the July 9, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking. (*See* 74 FR 30386).

Moreover, if the comment was framed as a request to reopen our interpretation of the term ''unnecessarily burdensome'' in CAA section 502, which it is not, we would deny such request because we have a court-ordered deadline to complete this rulemaking by November 16, 2009. In any event, although the commenter espouses a new interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' for an area source category, the commenter does not explain why EPA's interpretation of the term ''unnecessarily burdensome'' is arbitrary, capricious or otherwise not in accordance with law. We maintain that our interpretation of the term ''unnecessarily burdensome'' in section 502, as set forth in the Exemption Rule, is reasonable.

Comment. One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level.

The commenter stated that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that likewise, it is difficult or impossible for citizens to bring enforcement actions.

The commenter continued that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt without title V permits. The commenter also added that likewise, EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claimed that to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt.

The commenter concluded that EPA does not even acknowledge these benefits of title V, far less explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response. Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with substantial evidence that citizens would have the same access to information and the same ability to enforce under the asphalt processing and asphalt roofing manufacturing area source rule, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. The EPA reasonably applied the four factors to the facts of the asphalt processing and asphalt roofing manufacturing area source category, and the commenter has not identified any flaw in EPA's application of the four factor test.

Moreover, as explained in the proposal, we considered implementation and enforcement issues in evaluating the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. *See* 70 FR 32829–32830.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that State-delegated programs are sufficient to assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. *See* 74 FR 32822, 32829. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources and that these additional programs will supplement and enhance the success of compliance with this NESHAP. *See* 74 FR 32822, 32829–32830. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by area sources with this NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under this NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, which we dispute, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of the NESHAP. Furthermore, the fourth factor is one factor that we evaluated in

determining if the title V requirements were unnecessarily burdensome. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemptions for the asphalt processing and asphalt roofing manufacturing source category.

Comment. One commenter explained that title V provides important monitoring benefits, and, according to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for the asphalt processing and asphalt roofing manufacturing area source category. The commenter stated that in its proposal EPA proposed ''using parametric monitoring'' of either process changes or add-on controls. 74 FR at 32828.'' The commenter further stated that ''EPA argues that its proposed standard, by including these requirements, provides monitoring ''sufficient to assure compliance'' with the proposed rule. *Id.* at 32829.'' The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter stated that, for this reason as well, its claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and its exemption is unlawful and arbitrary and capricious.

Response. The EPA used the four-factor test described above to determine if title V requirements were unnecessarily burdensome for the asphalt processing and asphalt roofing manufacturing area source category. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source category. *See* 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. *See* 70 FR 75323.

The commenter asserts that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the proposed rule,'' and that ''EPA has failed to provide any evidence whatsoever to demonstrate that the monitoring requirements in [the asphalt processing and asphalt roofing manufacturing area source category rule] 'assure' compliance.'' However, the commenter does not provide any evidence that contradicts the conclusion that the proposed monitoring requirements are sufficient to assure compliance with the standards in the rule.

We considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring requirements in this area source rule can assure compliance. Compliance with the emission limits is determined during the initial assessment and continuous compliance with the final emission limits is demonstrated by monitoring parameters and process conditions established during the initial compliance assessment. For the reasons described above and in the proposed rule, the first factor supports exempting this area source category from title V requirements. Assuming for argument's sake that the first factor alone is not sufficient to support the exemption, *i.e.,* that a single factor cannot alone support the exemption, a proposition that EPA rejects, the four factors when considered in combination do support the exemption. As we explained in the preamble to the proposed rule, the four-factor balancing test requires EPA to examine the factors in combination and determine whether the factors, viewed together, weigh in favor of exemption. *See* 74 FR 32828. As explained above, we determined that the factors, weighed together, support exemption of the area source categories from title V.

Comment. According to one commenter EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 32829). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to the asphalt processing and asphalt roofing manufacturing area source category—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in the proposed asphalt processing and asphalt roofing manufacturing area source category NESHAP, would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response. The commenter takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition of title V permitting requirements is unnecessarily burdensome for the source category. The commenter also mischaracterizes the first of the four-factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts. While EPA recognizes that requiring a title V permit can generally offer additional compliance options, for the asphalt processing and asphalt roofing manufacturing area source category, EPA concluded that requiring title V permits would be unnecessarily burdensome because the final rule already contains provisions sufficient to assure compliance.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of ''whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.'' Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

The monitoring, recordkeeping, and reporting requirements in the rule are sufficient to assure compliance with the requirements of this rule and are sufficient to allow the public the opportunity to obtain knowledge about the source, consistent with the goal in title V permitting. For example, in the Initial Notification, the source must identify its size, whether it must meet any of the GACT requirements in the rule, and how it plans to comply with the rule requirements. Also, in the notification of compliance status, the

source must certify how it is achieving compliance and that it has complied with all of the requirements of the final rule. The source must keep records to document on going compliance with the emission standards finalized in this rule. The source must also submit semi-annual compliance reports to the delegated authority. This information is available to the public once the source has filed the reports with the delegated authority.

The EPA believes that these requirements in the rule itself, including the requirement to provide information about the source's compliance that is available to the public, provide sufficient basis to assure compliance, and that the title V requirements, if applicable to these sources, would not offer significant improvements in the compliance of the sources with the rule.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination. Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA must evaluate whether any improvement in compliance above what the rule requires justifies the costs associated with title V permitting requirements. The EPA reviewed the area source category at issue and determined that approximately 30 of the 75 sources that would be subject to the rule currently have a title V permit. As stated in the proposal (74 FR 32829), EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. *See* Information Collection Request for Part 70 Operating Permit Regulations, 72 FR 32290, June 12, 2007, EPA ICR Number 1587.07. Based on this information, EPA determined that there is a significant cost burden to the industry to require title V permitting for all the sources subject to the rule. In addition, in analyzing factor one, EPA found that imposition of the title V requirements offers no significant improvements in compliance. In considering the third factor, we stated in part that, ''Because the costs, both economic and non-economic, of compliance with title V are high for any small entity, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.'' *See* 74 FR 32829.

Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the area source category. The EPA found it reasonable, after considering all four factors, to exempt the asphalt processing and asphalt roofing manufacturing area source category from the permitting requirements in title V. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the asphalt processing and asphalt roofing manufacturing area source category, the comments provide no basis for the Agency to reconsider its proposal to exempt the category from title V.

Comment. According to one commenter, ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter stated that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, however, the Agency's argument boils down to the generic and conclusory claim that it generally views title V requirements as unnecessary. The commenter stated that, while this may be EPA's view, it was not Congress' view when Congress enacted title V, and a general view that title V is unnecessary does not suffice to show that title V compliance is unnecessarily burdensome.

Response. The commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. In any event, as explained above, we believe the Agency's interpretation of the term ''unnecessarily burdensome'' is a reasonable. In addition, our determination to exempt the asphalt processing and asphalt roofing manufacturing area source category from title V is specific to this rule, and is not, as the commenter suggests, reflective of a general view that title V requirements are unnecessary. We review the facts of each area source category individually in determining whether to exempt the category, or a portion of the category, from the requirements of title V pursuant to section 502. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. The EPA believes that these programs will be sufficient to assure compliance with the rule. The EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. The EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source standard.

The commenter argues that EPA cannot exempt these area sources from title V permitting requirements because ''t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' As an initial matter, EPA cannot exempt major sources from title V permitting. 42 U.S.C. 502(a). The application of the standard that the commenter proposes—that EPA must show that ''title V compliance is unnecessary''—in determining whether to exempt an area source category from title V is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome for the asphalt processing and asphalt roofing manufacturing area source category.

Furthermore, we disagree that the basis for excluding the asphalt processing and asphalt roofing manufacturing area source category

from title V requirements is generally applicable to any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the source category at issue in this rule.

Comment. One commenter stated that EPA concedes that the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment, citing 74 FR 32830. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare and the environment. The commenter stated that, instead, EPA offered only the conclusory assertion that ''the level of control would remain the same'' whether title V permits are required or not (74 FR 32830).

The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons provided earlier in its comments, and that, therefore, EPA's claims about public health, welfare and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: ''to assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA.'' The commenter stated that those benefits—of which EPA's proposed rule deprives the public—would improve compliance with the underlying standards and thus have benefits for public health, welfare and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again simply rests on its own apparent belief that they are never necessary.

The commenter concluded that, for the reasons given above, the attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response. Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' *See* CAA section 502(a). The EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome,'' as requiring consideration of the four factors discussed above. The EPA applied these four factors to the area source category subject to this rule and concluded that requiring title V for this area source category would be unnecessarily burdensome.

In addition to determining that title V would be unnecessarily burdensome on the asphalt processing and asphalt roofing manufacturing area source category, as in the Exemption Rule, EPA also considered whether exempting the area source category would adversely affect public health, welfare or the environment. As explained in the proposal preamble, we concluded that exempting the asphalt processing and asphalt roofing manufacturing area source category from title V would not adversely affect public health, welfare or the environment because the level of control would be the same even if title V applied. We further explained in the proposal preamble that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information that exemption of the asphalt processing and asphalt roofing manufacturing area source category from title V will adversely affect public health, welfare or the environment.

F. Definitions

Comment. Two commenters noted that the definition of saturator in the proposed rule implies that an impregnator vat is a saturator. The commenters noted that the distinction is important because emission limits in Table 2 of the proposed rule are different for coater-only lines and saturator-only lines. Consequently, the commenters said that EPA should clarify the definition of saturator. One of the commenters also noted that it would be helpful if EPA further explained what is meant by ''hot mix asphalt plant operations used in hardstand,'' ''operations where asphalt may be used in the fabrication of a built-up roof,'' ''asphalt roofing facility'' and ''wet looper.''

Response. We agree with the commenters and the final rule clarifies the definition of saturator with regard to impregnation vats and wet looper, and adds definitions for ''hot mix asphalt plant operations,'' ''built-up roofing operations,'' and ''asphalt roofing facility.''

G. Cost Impacts

Comment. One commenter stated that the EPA's assertions that all facilities will be able to meet the proposed standards using existing controls, that only 50 percent of facilities would need to install monitoring equipment, that the only additional costs would be for reporting and recordkeeping, and that the proposed rule would not impose a significant adverse impact on any facilities, large or small are not supported by information collected by the commenter.

Although it may be possible for some sources to modify existing control equipment to meet the emission limits, the commenter stated that it is unlikely that every source, especially the 11 small businesses, will be able to meet the standards under the worst foreseeable circumstances, the standard that is required for continuous compliance. (*See* Section V of these comments for a discussion of variability and *Sierra Club* v. *EPA,* 167 F.3d 658, 665 (DC Cir. 1999).

For the proposed GACT standards, the commenter noted that EPA estimated an average cost of $3000 per facility. The commenter believed that the compliance cost will be at least an order of magnitude greater than the EPA cost estimates. Accordingly, the commenter developed a cost estimate by assuming that 25 percent of existing lines will need to install controls equivalent to those EPA identified in 2001 as ''beyond the MACT floor.'' The commenter's industry-wide cost estimates, not adjusted for inflation, are:

- $12,921,000 in capital costs (19 lines × $680,000 in capital costs),
- $11,951,925 in installation costs (19 lines × $629,000 in installation costs),
- $6,971,011.33 in annual operating costs (19 lines × $367,000 in annual operating costs), and
- $234,000 (EPA's estimate of annual cost of $3000 per facility for monitoring, recordkeeping and reporting for 78 lines).

In addition, the commenter noted that facilities will bear the costs of performance testing. Under the proposal, the commenter said that facilities would have to continue re-testing until they conduct a test on one of the hottest days of the year. The commenter stated that these performance test costs will be significant—approximately $10,000 per test.

The commenter noted that these costs will not be incurred by individual facilities as ''industry-wide average costs.'' The commenter said that some facilities will bear only the $3000

annual recordkeeping and reporting costs; others will incur the $1,310,000 in capital costs and $367,000 in operating costs for each line at the facility and a further $3000 in monitoring, recordkeeping and reporting costs. In addition, the commenter said that most facilities will incur costs of at least $10,000 for each performance test required. The commenter stated that EPA did not account for these costs for performance testing.

Response. The commenter's assertions regarding control cost estimates are based upon the assumption that new control devices will be needed to comply with the GACT standards which we believe is not the case. Considering that all asphalt processing operations and the vast majority or asphalt roofing manufacturing operations are currently controlled, and considering the revised GACT emissions limits (which incorporate both the additional data provided by the commenter and the variability in the underlying emissions data) and the allowance for owners or operators to use manufacturer specifications when establishing monitoring parameter ranges for roofing lines in the final rule, we continue to believe that no new add-on control devices will be needed to comply with the GACT standards. Therefore, we do not believe that it is necessary to revise our approach for estimating control device costs. Additionally, we disagree with the commenter with regard to consideration of the costs of conducting compliance tests. We took into account the cost of conducting compliance tests in developing the final standards. In the Information Collection Request (ICR) prepared for this rulemaking, we assumed that 25 percent of the industry would need to conduct a new test (at a cost of $6,000) to demonstrate compliance with the GACT emission limits. We believe that this approach is reasonably conservative.

H. Miscellaneous

Comment. One commenter stated that in order for these rules to be implemented properly, EPA should provide sufficient additional funds to State and local clean air agencies. The commenter stated that in recent years, Federal grants for State and local air programs have amounted to only about one-third of what they should be, and budget requests for the last two years have called for additional cuts. According to the commenter, additional area source programs, which are not eligible for title V fees, will require significant increases in resources for State and local air agencies beyond what is currently provided. The commenter claims that without increased funding, some State and local air agencies may not be able to adopt and enforce additional area source rules.

Response. State and local air programs are an important and integral part of the regulatory scheme under the CAA. As always, EPA recognizes the efforts of State and local agencies in taking delegations to implement and enforce CAA requirements, including the area source standards under section 112. We understand the importance of adequate resources for State and local agencies to run these programs; however, the issue of funding for these resources is beyond the purview of today's rulemaking. The EPA today is promulgating standards for the Asphalt Processing and Asphalt Roofing Manufacturing area source category that reflect what constitutes GACT for the Urban HAP for which the source category was listed. GACT standards are technology-based standards. The level of State and local resources needed to implement these rules is not a factor that we consider in determining what constitutes GACT. Although the resource issue cannot be resolved through today's rulemaking for the reason stated above, EPA remains committed to working with State and local agencies to implement this rule. State and local agencies that receive grants for continuing air programs under CAA section 105 should work with their project officer to determine what resources are necessary to implement and enforce the area source standards. The EPA will continue to provide the resources appropriated for section 105 grants consistent with the statute and the allotment formula developed pursuant to the statute.

VI. Summary of Impacts of the Final Standards

A. What Are the Air Impacts?

Since 1990, in addition to a lessening of air impacts due to the increased use of add-on controls in response to Federal and State permitting requirements, the asphalt processing and asphalt roofing manufacturing industry has further reduced its air impacts by reducing the amount of asphalt used to manufacture roofing products (reformulation), largely through the use of inorganic substrates which do not require the asphalt-intensive step of saturating the substrate. These process improvements have reduced the generation rate of PAH emissions by approximately 0.0015 lbs/ton of product manufactured before controls are applied. In addition to the PAH emission reductions, the process improvements undertaken by the industry since 1990 have resulted in reductions of approximately 0.02 lbs of total HAP, 0.29 lbs of THC, and 0.58 lbs of PM per ton of product manufactured.

We believe that the final standards codify, and thereby lock in, the reductions in PAH emissions, and the concomitant reductions in total HAP, THC, and PM emissions resulting from co-control, that have been achieved by the asphalt refining and asphalt roofing manufacturing industry since 1990 by requiring compliance with the level of control that can be achieved via the use of current GACT as applied to the reduced amount of asphalt used by the industry to produce asphalt roofing products.

B. What Are the Cost Impacts?

While some asphalt processing and asphalt roofing manufacturing facilities may need to conduct emissions tests to demonstrate compliance with the final standards, based on the available information, we believe that all asphalt processing and asphalt roofing manufacturing facilities will be able to meet the final standards using existing controls. Therefore, no additional air pollution control devices would be required. We have assumed that 38 facilities (50 percent) will need to install a pressure drop monitoring system for existing controls. Compliance with the final rule will not require any other capital expenditures. We do not expect compliance with the final rule to result in any new control device operational and maintenance costs because, absent any data to demonstrate otherwise, we have assumed that existing facilities are already following the manufacturer's instructions for operating and maintaining air pollution control devices and systems.

The annual cost of monitoring, reporting, and recordkeeping for this final rule is estimated at approximately $3,000 per facility per year for the first 3 years following promulgation. The costs are expected to be less than 1 percent of revenues. The annual cost estimate includes 8 hours per facility per year for preparing semiannual compliance reports.

The annual cost estimate includes 12,442 labor hours for the first 3 years following promulgation. This total includes 173 hours industry-wide for preparation of the Initial Notification in the first year and 173 hours industry-wide for preparation of the Notification of Compliance Status in the first year. The average total labor hour burden in the first year is 71 hours per facility,

which include 15 hours per facility for monitoring activities.

Information on our cost impact estimates on the sources expected to be subject to the final rule is available in the docket for this final rule. (*See* Docket ID No. EPA–HQ–OAR–2009–0027).

C. What Are the Economic Impacts?

The only measurable costs attributable to these final standards are associated with the monitoring, recordkeeping, and reporting requirements. These final standards are estimated to impact a total of 75 area source facilities. We estimate that 11 of these facilities are owned by small businesses. Our analysis indicates that this final rule would not impose a significant adverse impact on any facilities, large or small, because, even for the smallest sources, these costs are less than 1 percent of the individual company revenues.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

No detrimental secondary impacts are expected to occur from the asphalt processing and asphalt roofing manufacturing sources complying with the final rule because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PAH and PM emissions collected and there are no additional energy impacts associated with the operation of control devices or monitoring systems for the asphalt refining and asphalt roofing manufacturing sources. We expect no increase in the generation of wastewater or other water quality impacts. None of the control measures considered for this final rule generate a wastewater stream.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because OMB determined that it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP would require asphalt processing and asphalt roofing manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status, and to conduct continuous parametric monitoring and submit semi-annual compliance reports according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 4,147 labor hours per year at a total cost of $224,085 or approximately $3,000 per facility. Burden is defined at 5 CFR 1320.3(b).

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. EPA displays OMB control numbers various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

When this ICR is approved by OMB, the Agency will publish a **Federal Register** notice announcing this approval and displaying the OMB control number for the approved information collection requirements contained in this final rule. We will also publish a technical amendment to 40 CFR part 9 in the **Federal Register** to consolidate the display of the OMB control number with other approved information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would 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 the purposes of assessing the impacts of the final asphalt processing and asphalt roofing manufacturing area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 for NAICS 324122); (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 is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is estimated to impact all new and existing asphalt processing and asphalt roofing manufacturing area source facilities. We estimate that 11 facilities are owned by small entities. Although some small entities may incur capital costs to install additional monitoring equipment (*e.g.,* a pressure drop monitoring system for existing controls), we have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 1 percent of revenues for any individual facility. The costs are so small that the impact is not expected to be significant. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next year, and consequently, we did not estimate any impacts for new sources.

This final rule will not have a significant economic impact on a substantial number of small entities; however, EPA has, nonetheless, tried to reduce the impact of this final rule on small entities. The standards represent practices and controls that are common throughout the asphalt processing and asphalt roofing manufacturing industry. The standards also require only the essential monitoring, recordkeeping, and reporting needed to demonstrate and verify compliance. These final standards were developed based, in part, on information concerning small businesses included in the data provided by ARMA, as well as

information obtained through online permit database searches, consultation with small business representatives on the state and national level, and consultation with industry representatives that are affiliated with small businesses.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total annual cost of the rule is estimated at $224,085/yr. This final rule is not expected to impact State, local, or Tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

This action 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. This final rule does not impose any requirements on state and local governments and therefore creates no substantial direct effects on the states. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did solicit comment from State program officials. A summary of these comments and EPA's response to these comments is provided in section V of this preamble.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final action imposes no requirements on Tribal governments; thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant,'' as defined under 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 the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance. It is also not ''economically significant''.

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

This action 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. We have concluded that this final rule will not likely have any significant adverse energy effects because no additional pollution controls or other equipment that consume energy will be needed to comply with the final rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rulemaking involves technical standards. The EPA has decided to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5A, and 23 in conjunction with the final rule. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified.

Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, any disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have any disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations.

K. Congressional Review Act

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

action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective December 2, 2009.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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.*

■ 2. Part 63 is amended by adding subpart AAAAAAA to read as follows:

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

Applicability and Compliance Dates

Sec.

63.11559 Am I Subject to this Subpart?
63.11560 What are my Compliance Dates?

Standards and Compliance Requirements

63.11561 What are my Standards and Management Practices?
63.11562 What are my Initial Compliance Requirements?
63.11563 What are my Monitoring Requirements?
63.11564 What are my Notification, Recordkeeping, and Reporting Requirements?

Other Requirements and Information

63.11565 What General Provisions Sections Apply to this Subpart?
63.11566 What Definitions Apply to this Subpart?
63.11567 Who Implements and Enforces this Subpart?

Tables

Table 1 of Subpart AAAAAAA—Emission Limits for Asphalt Processing Operations
Table 2 of Subpart AAAAAAA—Emission Limits for Asphalt Roofing Manufacturing Operations
Table 3 of Subpart AAAAAAA—Test Methods
Table 4 of Subpart AAAAAAA—Operating Limits
Table 5 of Subpart AAAAAAA—Applicability of General Provisions to Subpart AAAAAAA

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

Applicability and Compliance Dates

§ 63.11559 Am I Subject to this Subpart?

(a) You are subject to this subpart if you own or operate an asphalt processing operation and/or asphalt roofing manufacturing operation that is an area source of hazardous air pollutant (HAP) emissions, as defined in § 63.2.

(b) This subpart applies to each new or existing affected source as defined in paragraphs (b)(1) and (b)(2) of this section.

(1) *Asphalt processing.* The affected source for asphalt processing operations is the collection of all blowing stills, as defined in § 63.11566, at an asphalt processing operation.

(2) *Asphalt roofing manufacturing.* The affected source for asphalt roofing manufacturing operations is the collection of all asphalt coating equipment, as defined in § 63.11566, at an asphalt roofing manufacturing operation.

(c) This subpart does not apply to hot mix asphalt plant operations that are used in the paving of roads or hardstand, or operations where asphalt may be used in the fabrication of a built-up roof.

(d) An affected source is a new affected source if you commenced construction or reconstruction after July 9, 2009.

(e) An affected source is reconstructed if it meets the criteria as defined in § 63.2.

(f) An affected source is an existing source if it is not new or reconstructed.

(g) This subpart does not apply to research or laboratory facilities, as defined in section 112(c)(7) of the Clean Air Act.

(h) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11560 What are my Compliance Dates?

(a) If you own or operate an existing affected source, you must be in compliance with the applicable provisions in this subpart no later than December 2, 2010. As specified in § 63.11562(f), you must demonstrate initial compliance within 180 calendar days after December 2, 2010.

(b) If you own or operate a new affected source, you must be in compliance with the provisions in this subpart on or before December 2, 2009 or upon startup, whichever date is later. As specified in § 63.11562(g), you must demonstrate initial compliance with the applicable emission limits no later than 180 calendar days after December 2, 2009 or within 180 calendar days after startup of the source, whichever is later.

Standards and Compliance Requirements

§ 63.11561 What are my Standards and Management Practices?

(a) For asphalt processing operations, you must meet the emission limits specified in Table 1 of this subpart.

(b) For asphalt roofing manufacturing lines, you must meet the applicable emission limits specified in Table 2 of this subpart.

(c) These standards apply at all times.

§ 63.11562 What are my Initial Compliance Requirements?

(a) For asphalt processing operations, you must:

(1) Demonstrate initial compliance with the emission limits specified in Table 1 of this subpart by:

(i) Conducting emission tests using the methods specified in Table 3 of this subpart; or

(ii) Using the results of a previously-conducted emission test as specified in paragraph (d) of this section.

(2) Establish the value or range of values of the operating parameters specified in Table 4 of this subpart:

(i) Using the operating parameter data recorded during the compliance emission tests; or

(ii) Using the operating parameter data recorded during a previously-conducted emission test.

(b) For asphalt roofing manufacturing lines that use a control device to comply with the emission limits in Table 2 of this subpart, you must:

(1) Demonstrate initial compliance by:

(i) Conducting emission tests using the methods specified in Table 3 of this subpart; or

(ii) Using the results of a previously-conducted emission test as specified in paragraph (d) of this section.

(2) Establish the value of the operating parameter specified in Table 4 of this subpart for thermal oxidizers:

(i) Using the operating parameter data recorded during the compliance emission tests; or

(ii) Using the operating parameter data recorded during a previously-conducted emission test.

(3) Establish the value or range of values of the operating parameters

specified in Table 4 of this subpart for control devices other than thermal oxidizers:

(i) Using the operating parameter data recorded during the compliance emission tests;

(ii) Using the operating parameter data recorded during a previously-conducted emission test; or

(iii) Using manufacturer performance specifications.

(c) For asphalt roofing manufacturing lines that do not require a control device to comply with the emission limits in Table 2 of this subpart, you must:

(1) Demonstrate initial compliance by:

(i) Conducting emission tests using the methods specified in Table 3 of this subpart,

(ii) Using the results of a previously-conducted emission test as specified in paragraph (d) of this section; or

(iii) Using process knowledge and engineering calculations as specified in paragraph (e) of this section.

(2) Establish the value or range of values of the operating parameters specified in Table 4 of this subpart:

(i) Using the operating parameter data recorded during the compliance emission tests;

(ii) Using the operating parameter data recorded during a previously-conducted emission test; or

(iii) Using process knowledge and engineering calculations as specified in paragraph (f) of this section.

(d) If you are using a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart for existing sources, as specified in paragraphs (a)(1)(ii), (b)(1)(ii), or (c)(1)(ii) of this section, the following conditions must be met:

(1) The emission test was conducted within the last 5 years;

(2) No changes have been made to the process since the time of the emission test;

(3) The operating conditions and test methods used for the previous test conform to the requirements of this subpart; and

(4) The data used to establish the value or range of values of the operating parameters, as specified in paragraphs (a)(2)(ii), (b)(2)(ii), or (c)(2)(ii) of this section, were recorded during the emission test.

(e) If you are using process knowledge and engineering calculations to demonstrate initial compliance as specified in paragraph (c)(1)(iii) of this section, you must prepare written documentation that contains the data and any assumptions used to calculate the process emission rate that demonstrate compliance with the emission limits specified in Table 2 of this subpart.

(f) If you are using process knowledge and engineering calculations to establish the value or range of values of operating parameters as specified in paragraph (c)(2)(iii) of this section, you must prepare written documentation that contains the data and any assumptions used to show that the process parameters and corresponding parameter values correlate to the process emissions.

(g) For existing sources, you must demonstrate initial compliance no later than 180 calendar days after December 2, 2010.

(h) For new sources, you must demonstrate initial compliance no later than 180 calendar days after December 2, 2009 or within 180 calendar days after startup of the source, whichever is later.

(i) For emission tests conducted to demonstrate initial compliance with the emission limits specified in Tables 1 and 2 of this subpart, you must follow the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) You must conduct the tests while manufacturing the product that generates the greatest PAH and PM emissions to the control device inlet, or exiting the process if you are not using a control device to comply with the emissions limits specified in Tables 1 and 2 of this subpart.

(2) You must conduct a minimum of three separate test runs for each compliance test specified in paragraphs (a)(1)(i), (b)(1)(i), and (c)(1)(i) of this section according to the requirements specified in § 63.7(e)(3). The sampling time and sample volume of each test run must be as follows:

(i) For asphalt processing operations, the sampling time and sample volume for each test run must be at least 90 minutes or the duration of the coating blow or non-coating blow, whichever is greater, and 2.25 dscm (79.4 dscf).

(ii) For asphalt coating operations, the sampling time and sample volume for each test run must be at least 120 minutes and 3.00 dscm (106 dscf).

(3) For asphalt processing operations, you must use the following equations to calculate the asphalt charging rate (P).

(i) $P = (Vd)/(K' \Theta)$

Where:

P = asphalt charging rate to blowing still, Mg/hr (ton/hr).
V = volume of asphalt charged, m^3 (ft^3).
d = density of asphalt, kg/m^3 (lb/ft^3).
K′ = conversion factor, 1000 kg/Mg (2000 lb/ton).
Θ = duration of test run, hr.

(ii) $d = K_1 - K_2 T_i$

Where:

d = Density of the asphalt, kg/m^3 (lb/ft^3)
$d = K_1 - K_2 T_i$
K_1 = 1056.1 kg/m^3 (metric units)
= 66.6147 lb/ft^3 (English Units)
K_2 = 0.6176 kg/(m^3 °C) (metric units)
= 0.02149 lb/(ft^3 °F) (English Units)
T_i = temperature at the start of the blow, °C (°F)

(4) You must use the following equation to demonstrate compliance with the emission limits specified in Table 2 of this subpart:

E = [(C)*(Q)/(P)*(K)]

Where:

E = emission rate of particulate matter, kg/Mg (lb/ton).
C = concentration of particulate matter, g/dscm (gr/dscf).
Q = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).
P = the average asphalt roofing production rate or asphalt charging rate over the duration of the test, Mg/hr (ton/hr).
K = conversion factor, 1000 g/kg [7000 (gr/lb)].

§ 63.11563 What are my Monitoring Requirements?

(a) You must maintain the operating parameters established under § 63.11562(a)(2), (b)(2), (b)(3), and (c)(2) as specified in Table 4 of this subpart.

(b) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must develop and make available for inspection by the delegated authority, upon request, a site-specific monitoring plan for each monitoring system that addresses the following:

(1) Installation of the CPMS probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(2) Performance and equipment specifications for the probe or interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(i) In your site-specific monitoring plan, you must also address the following:

(A) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(B) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(C) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(c) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) as specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) To determine the 3-hour average, you must:

(i) Have a minimum of four successive cycles of operation to have a valid hour of data.

(ii) Have valid data from at least three of four equally spaced data values for that hour from a CPMS that is not out-of-control according to your site-specific monitoring plan.

(iii) Determine the 3-hour average of all recorded readings for each operating day, except as stated in paragraph (g) of this section. You must have at least two of the three hourly averages for that period using only hourly average values that are based on valid data (*i.e.,* not from out-of-control periods).

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(d) For each temperature monitoring device, you must meet the CPMS requirements in paragraphs (c)(1) through (c)(3) of this section and the following requirements:

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a noncryogenic temperature range, use a temperature sensor with a minimum measurement sensitivity of 2.8 °C or 1.0 percent of the temperature value, whichever is larger.

(3) If a chart recorder is used, the recorder sensitivity in the minor division must be at least 20 °F.

(4) Perform an accuracy check at least semiannually or following an operating parameter deviation:

(i) According to the procedures in the manufacturer's documentation; or

(ii) By comparing the sensor output to redundant sensor output; or

(iii) By comparing the sensor output to the output from a calibrated temperature measurement device; or

(iv) By comparing the sensor output to the output from a temperature simulator.

(5) Conduct accuracy checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(6) At least quarterly or following an operating parameter deviation, perform visual inspections of components if redundant sensors are not used.

(e) For each pressure measurement device, you must meet the CPMS requirements of paragraphs (e)(1) through (e)(6) of this section and the following requirements:

(1) Locate the pressure sensor(s) in, or as close as possible, to a position that provides a representative measurement of the pressure.

(2) Use a gauge with a minimum measurement sensitivity of 0.12 kiloPascals or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(3) Check pressure tap for blockage daily. Perform an accuracy check at least quarterly or following an operating parameter deviation:

(i) According to the manufacturer's procedures; or

(ii) By comparing the sensor output to redundant sensor output.

(4) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(5) At least monthly or following an operating parameter deviation, perform a leak check of all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(6) At least quarterly or following an operating parameter deviation, perform visible inspections on all components if redundant sensors are not used.

(f) For each electrostatic precipitator (ESP) used to control emissions, you must install and operate a CPMS that meets the requirements of paragraphs (c)(1) through (c)(3) of this section to provide representative measurements of the voltage supplied to the ESP.

(j) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(k) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

(l) If you are not using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must develop and make available for inspection by the delegated authority, upon request, a site-specific monitoring plan. The plan must specify the process parameters established during the initial compliance assessment and how they are being monitored and maintained to demonstrate continuous compliance.

(m) If you would like to use parameters or means other than those specified in Table 4 of this subpart to demonstrate continuous compliance with the emission limits specified in Tables 1 and 2 of this subpart, you must apply to the Administrator for approval of an alternative monitoring plan under § 63.8(f). The plan must specify how process parameters established during the initial compliance assessment will be monitored and maintained to demonstrate continuous compliance.

(n) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 63.11564 What are my Notification, Recordkeeping, and Reporting Requirements?

(a) You must submit the notifications specified in paragraphs (a)(1) through (a)(6) of this section.

(1) You must submit all of the notifications in §§ 63.5(b), 63.7(b); 63.8(e) and (f); 63.9(b) through (e); and 63.9(g) and (h) that apply to you by the dates specified in those sections.

(2) As specified in § 63.9(b)(2), if you have an existing affected source, you must submit an Initial Notification not later than 120 calendar days after December 2, 2009.

(3) As specified in § 63.9(b)(4) and (5), if you have a new affected source, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(4) You must submit a notification of intent to conduct a compliance test at least 60 calendar days before the compliance test is scheduled to begin, as required in § 63.7(b)(1).

(5) You must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the compliance test results, before the close of business on the 60th calendar day following the completion of the compliance test according to § 63.10(d)(2).

(6) If you are using data from a previously-conducted emission test to serve as documentation of compliance with the emission standards and

operating limits of this subpart, you must submit the test data in lieu of the initial compliance test results with the Notification of Compliance Status required under paragraph (a)(5) of this section.

(b) You must submit a compliance report as specified in paragraphs (b)(1) through (b)(4) of this section.

(1) If you are using a control device to comply with the emission limits, the compliance report must identify the controlled units (*e.g.,* blowing stills, saturators, coating mixers, coaters). If you are not using a control device to comply with the emission limits, the compliance report must identify the site-specific process operating parameters monitored to determine compliance with the emission limits.

(2) During periods for which there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, the compliance report must contain the information specified in paragraphs (b)(2)(i) through (b)(2)(v) of this section.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A statement that there were no deviations from the emission limitations during the reporting period.

(v) If there were no periods during which the CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(3) For each deviation from an emission limitation (emission limit and operating limit), you must include the information in paragraphs (b)(3)(i) through (b)(3)(xii) of this section.

(i) The date and time that each deviation started and stopped.

(ii) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(viii) An identification of each air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the CPMS.

(xi) The date of the latest CPMS certification or audit.

(xii) A description of any changes in CPMS or controls since the last reporting period.

(4) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report specified in paragraph (b) of this section according to the following dates:

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11560 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.11560.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11560.

(iii) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(c) You must maintain the records specified in paragraphs (c)(1) through (c)(10) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Copies of emission tests used to demonstrate compliance and performance evaluations as required in § 63.10(b)(2)(viii).

(3) Documentation that shows that the following conditions are true if you use a previously-conducted emission test to demonstrate initial compliance as specified in § 63.11562(a)(1)(ii), (b)(1)(ii), and (c)(1)(ii):

(i) The test was conducted within the last 5 years;

(ii) No changes have been made to the process since the time of the emission test;

(iii) The operating conditions and test methods used for the previous test conform to the requirements of this subpart; and

(iv) The data used to establish the value or range of values of the operating parameters, as specified in § 63.11562(a)(2)(ii), (b)(2)(ii), or (c)(2)(ii), were recorded during the emission test.

(4) Documentation that identifies the operating parameters and values specified in Table 4 of this subpart and that contains the data used to establish the parameter values as specified in § 63.11562(a)(2), (b)(2), (b)(3), or (c)(2).

(5) Copies of the written manufacturers performance specifications used to establish operating parameter values as specified in § 63.11562(b)(3)(iii).

(6) Documentation of the process knowledge and engineering calculations used to demonstrate initial compliance as specified in § 63.11562(e).

(7) Documentation of the process knowledge and engineering calculations used to establish the value or range of values of operating parameters as specified in § 63.11562(f).

(8) A copy of the site-specific monitoring plan required under § 63.11563(b) or (l).

(9) A copy of the approved alternative monitoring plan required under § 63.11563(m), if applicable.

(10) Records of the operating parameter values required in Table 4 of this subpart to show continuous compliance with each operating limit that applies to you.

Other Requirements and Information

§ 63.11565 What General Provisions Sections Apply to this Subpart?

You must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 5 of this subpart.

§ 63.11566 What Definitions Apply to this Subpart?

Asphalt coating equipment means the saturators, coating mixers, and coaters

used to apply asphalt to substrate to manufacture roofing products (*e.g.,* shingles, roll roofing).

Asphalt flux means the organic residual material from distillation of crude oil that is generally used in asphalt roofing manufacturing and paving and non-paving asphalt products.

Asphalt processing operation means any operation engaged in the preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities. Asphalt preparation, called ''blowing,'' is the oxidation of asphalt flux, achieved by bubbling air through the heated asphalt, to raise the softening point and to reduce penetration of the oxidized asphalt. An asphalt processing facility includes one or more asphalt flux blowing stills.

Asphalt roofing manufacturing operation means the collection of equipment used to manufacture asphalt roofing products through a series of sequential process steps. The equipment configuration of an asphalt roofing manufacturing process varies depending upon the type of substrate used (*i.e.,* organic or inorganic). For example, an asphalt roofing manufacturing line that uses organic substrate (*e.g.,* felt) typically would consist of a saturator (and wet looper), coating mixer, and coater (although the saturator could be bypassed if the line manufacturers multiple types of products). An asphalt roofing manufacturing line that uses inorganic (fiberglass mat) substrate typically would consist of a coating mixer and coater.

Blowing still means the equipment in which air is blown through asphalt flux to change the softening point and penetration rate of the asphalt flux, creating oxidized asphalt.

Built-up roofing operations means operations involved in the on-site (*e.g.,* at a commercial building) assembly of roofing system components (*e.g.,* asphalt, substrate, surface granules).

Coater means the equipment used to apply amended (filled or modified) asphalt to the top and bottom of the substrate (typically fiberglass mat) used to manufacture shingles and rolled roofing products.

Coating mixer means the equipment used to mix coating asphalt and a mineral stabilizer, prior to applying the stabilized coating asphalt to the substrate.

Hot-mix asphalt operation means operations involved in mixing asphalt cement and aggregates to produce materials for paving roadways and hardstand (*e.g.,* vehicle parking lots, prepared surfaces for materiel storage).

Particulate matter (PM) means, for the purposes of this subpart, includes any material determined gravimetrically using EPA Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing And Asphalt Roofing Industry (40 CFR Part 60, Appendix A–3).

Responsible official is defined in § 63.2.

Saturator means the equipment used to impregnate a substrate (predominantly organic felt) with asphalt. Saturators are predominantly used for the manufacture of rolled-roofing products (*e.g.,* saturated felt). For the purposes of this subpart, the term saturator includes impregnation vat and wet looper.

Wet looper means the series of rollers typically following the saturator used to provide additional absorption time for asphalt to penetrate the roofing substrate.

§ 63.11567 Who Implements and Enforces this Subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.11559, 63.11560, 63.11561, 63.11562, and 63.11563.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

Tables

TABLE 1 OF SUBPART AAAAAAA OF PART 63—EMISSION LIMITS FOR ASPHALT PROCESSING (REFINING) OPERATIONS

For * * *	You must meet the following emission limits * * *
1. Blowing stills	a. Limit PAH emissions to 0.003 lb/ton of asphalt charged to the blowing stills; or b. Limit PM emissions to 1.2 lb/ton of asphalt charged to the blowing stills.

TABLE 2 OF SUBPART AAAAAAA OF PART 63—EMISSION LIMITS FOR ASPHALT ROOFING MANUFACTURING (COATING) OPERATIONS

For * * *	
1. Coater-only production lines	a. Limit PAH emissions to 0.0002 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.06 lb/ton of asphalt roofing product manufactured.
2. Saturator-only production lines	a. Limit PAH emissions to 0.0007 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.30 lb/ton of asphalt roofing product manufactured.
3. Combined saturator/coater production lines	a. Limit PAH emissions to 0.0009 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.36 lb/ton of asphalt roofing product manufactured.

TABLE 3 OF SUBPART AAAAAAA OF PART 63—TEST METHODS

For * * *	You must use * * *
1. Selecting the sampling locations[a] and the number of traverse points.	EPA test method 1 or 1A in appendix A to part 60.
2. Determining the velocity and volumetric flow rate.	EPA test method 2, 2A, 2C, 2D, 2F, or 2G, as appropriate, in appendix A to part 60.
3. Determining the gas molecular weight used for flow rate determination.	EPA test method 3, 3A, 3B, as appropriate, in appendix A to part 60.
4. Measuring the moisture content of the stack gas.	EPA test method 4 in appendix A to part 60.
5. Measuring the PM emissions	EPA test method 5A in appendix A to part 60.
6. Measuring the PAH emissions	EPA test method 23[b] with analysis by SW–846 Method 8270D.

[a] The sampling locations must be located at the outlet of the process equipment (or control device, if applicable), prior to any releases to the atmosphere.
[b] When using EPA Method 23, the toluene extraction step specified in section 3.1.2.1 of the method should be omitted.

TABLE 4 OF SUBPART AAAAAAA OF PART 63—OPERATING LIMITS

If you comply with the emission limits using * * *	You must establish an operating value for * * *	And maintain[a] * * *
1. A thermal oxidizer	Combustion zone temperature	The 3-hour average combustion zone temperature at or above the operating value established as specified in §63.11562(a)(2) and (b)(2).
2. A high-efficiency air filter or fiber bed filter.	a. Inlet gas temperature[b], and b. Pressure drop across device[b]	The 3-hour average inlet gas temperature within the operating range established as specified in §63.11562(a)(2) and (b)(3). The 3-hour average pressure drop across the device within the approved operating range established as specified in §63.11562(a)(2) and (b)(3).
3. An electrostatic precipitator (ESP).	Voltage[c] to the ESP	The 3-hour average ESP voltage[c] at or above the approved operating value established as specified in §63.11562(a)(2) and (b)(3).
4. Process modifications (*i.e.*, a control device is not required).	Appropriate process monitoring parameters.[d]	The monitoring parameters within the operating values established as specified in §63.11562(c)(2).

[a] The 3-hour averaging period applies at all times other than startup and shutdown, as defined in §63.2. Within 24 hours of a startup event, or 24 hours prior to a shutdown event, you must normalize the emissions that occur during the startup or shutdown, when there is no production rate available to assess compliance with the lb/ton of product emission limits, with emissions that occur when the process is operational. The emissions that occur during the startup or shutdown event must be included with the process emissions when assessing compliance with the emission limits specified in Tables 1 and 2 of this subpart.
[b] As an alternative to monitoring the inlet gas temperature and pressure drop, you can use a leak detection system that identifies when the filter media has been comprised.
[c] As an alternative to monitoring the ESP voltage, you can monitor the ESP instrumentation (*e.g.* light, alarm) that indicates when the ESP must be cleaned and maintain a record of the instrumentation on an hourly basis. Failure to service the ESP within one hour of the indication is an exceedance of the applicable monitoring requirements specified in §63.11563(a).
[d] If you are not using a control device to comply with the emission limits specified in Table 2 of this subpart, the process parameters and corresponding parameter values that you select to demonstrate continuous compliance must correlate to the process emissions.

TABLE 5 OF SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA

Citation	Subject	Applies to subpart AAAAAAA
§63.1	Applicability	Yes.
§63.2	Definitions	Yes.
§63.3	Units and Abbreviations	Yes.
§63.4	Prohibited Activities	Yes.
§63.5	Construction/Reconstruction	Yes.
§63.6(a)–(d)	Compliance With Standards and Maintenance Requirements	Yes.
§63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§63.6(e)(1)(ii)	Operation and Maintenance Requirements	No.
§63.6(e)(1)(iii)	Operation and Maintenance Requirements	Yes.
§63.6(e)(2)	[Reserved]	
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§63.6(f)(1)	Compliance with Nonopacity Emission Standards	No. The emission limits apply at all times.
§63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance	Yes.
§63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart AAAAAAA does not contain opacity or VE standards.
§63.6(i)	Compliance Extension	Yes.
§63.6(j)	Presidential Compliance Exemption	Yes.
§63.7(a)–(d)	Performance Testing Requirements	Yes.
§63.7(e)(1)	Performance Testing Requirements	No. Subpart AAAAAAA specifies the conditions under which performance tests must be conducted.
§63.7(e)(2)–(4)	Conduct of Performance Tests and Data Reduction	Yes.

TABLE 5 OF SUBPART AAAAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAAAA—Continued

Citation	Subject	Applies to subpart AAAAAAA
§ 63.7(f)–(h)	Use of Alternative Test Method; Data Analysis, Recordkeeping, and Reporting; and Waiver of Performance Tests.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	No. Subpart AAAAAAA does not allow CEMS.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Conduct of Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.
§ 63.8(d)	CMS Quality Control	No; § 63.11563 specifies the CMS requirements.
§ 63.8(e)–(f)	CMS Performance Evaluation	Yes.
§ 63.8(g)(1)–(4)	Data Reduction Requirements	Yes.
§ 63.8(g)(5)	Data to Exclude from Averaging	No. All monitoring data must be included when calculating averages.
§ 63.9	Notification Requirements	Yes.
§ 63.10(a)	Recordkeeping and Reporting Requirements—Applicability	Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes.
§ 63.10(b)(2)(i)–(iii)	General Recordkeeping Requirements	Yes.
§ 63.10(b)(2)(iv)–(v)	Records of Actions Taken During Startup, Shutdown, and Malfunction Plans.	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.10(b)(2)(vi)–(xiv)	General Recordkeeping Requirements	Yes.
§ 63.10(c)(1)–(14)	Additional Recordkeeping Requirements for Sources with Continuous Monitoring Systems.	Yes.
§ 63.10(c)(15)	Additional Recordkeeping Requirements for Sources with Continuous Monitoring Systems.	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.10(d)(1)–(4)	General Reporting Requirements	Yes.
§ 63.10(d)(5)	Periodic Startup, Shutdown, and Malfunction Reports	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.10(e)	Additional Reporting Requirements for Sources with Continuous Monitoring Systems.	Yes.
§ 63.10(f)	Waiver of Recordkeeping or Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

[FR Doc. E9–27946 Filed 12–1–09; 8:45 am]

BILLING CODE 6560–50–P