the Aspen, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) under the 1987 standards. The Governor's submittal, among other things, documents that the Aspen area has attained the PM_{10} national ambient air quality standards (NAAQS), requests redesignation to attainment, and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for 10 years. EPA is proposing to approve this redesignation request and maintenance plan because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Subsequent to this approval, the Aspen area would be designated attainment for the PM_{10} NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before June 16, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Quality Control Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Libby Faulk, EPA, Region VIII, (303) 312–6083.

SUPPLEMENTARY INFORMATION: *See* the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: April 18, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12025 Filed 5–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0044; FRL –7497–8]

RIN 2060–AF31

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On March 16, 1994, the EPA promulgated General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements that are established under section 112 of the Clean Air Act (CAA). On April 5, 2002, we amended the General Provisions to revise and clarify several of the requirements. In this action, we are proposing additional amendments that would provide regulatory relief, where appropriate, to facilities that use pollution prevention (P2) to achieve and maintain hazardous air pollutant (HAP) emissions reductions equivalent to or better than the maximum achievable control technology (MACT) level of control required under applicable NESHAP.

We are proposing these amendments to encourage and promote pollution prevention, which is our strategy of first choice for reducing HAP emissions. EPA is also proposing additional incentives specifically designed for, and only available to, facilities that are members of the National Environmental Performance Track program (Performance Track). The Performance Track program recognizes and encourages top environmental performers; those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment.

DATES: *Comments.* Submit comments on or before July 14, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by June 5, 2003, a public hearing will be held on June 12, 2003.

ADDRESSES: *Comments.* The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

Public Hearing. If a public hearing is requested, it will be held at the new EPA facility complex in Research Triangle Park, NC at 10 a.m. Persons interested in attending the hearing or wishing to present oral testimony should notify Dorothy Apple, Policy, Planning, and Standards Group (MD-C439–04), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–4487 at least 2 days in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: Steve Fruh, Policy, Planning, and Standards Group (MD–C439–04), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–2837, electronic mail (e-mail) address, *fruh.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially affected by this action include all source categories listed pursuant to section 112(c) and (k) of the CAA:

Industry Group: Source Categories With Major and Area Sources

Fuel Combustion

Combustion Turbines
Engine Test Facilities
Industrial Boilers
Process Heaters
Reciprocating Internal Combustion Engines
Rocket Testing Facilities

Non-Ferrous Metals Processing

Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Primary Magnesium Refining
Secondary Aluminum Production
Secondary Lead Smelting

Ferrous Metals Processing

Coke By-Product Plants
Coke Ovens: Charging, Top Side, and Door Leaks
Coke Ovens: Pushing, Quenching, Battery Stacks
Ferroalloys Production: Silicomanganese and Ferromanganese
Integrated Iron and Steel Manufacturing
Iron Foundries Electric Arc Furnace (EAF) Operation
Steel Foundries
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing

Alumina Processing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Clay Products Manufacturing
Lime Manufacturing
Mineral Wool Production
Portland Cement Manufacturing
Refractories Manufacturing
Taconite Iron Ore Processing
Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining

Oil and Natural Gas Production
Natural Gas Transmission and Storage
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution

Gasoline Distribution (Stage 1)
Marine Vessel Loading Operations
Organic Liquids Distribution (Non-Gasoline)

Surface Coating Processes

Aerospace Industries
Auto and Light Duty Truck
Large Appliance
Magnetic Tapes
Manufacture of Paints, Coatings, and Adhesives
Metal Can
Metal Coil
Metal Furniture
Miscellaneous Metal Parts and Products
Paper and Other Webs
Plastic Parts and Products
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing
Shipbuilding and Ship Repair
Wood Building Products
Wood Furniture

Waste Treatment and Disposal

Hazardous Waste Incineration
Municipal Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW) Emissions
Sewage Sludge Incineration
Site Remediation
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)

Agricultural Chemicals Production

Pesticide Active Ingredient Production

Fibers Production Processes

Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

Food and Agriculture Processes

Manufacturing of Nutritional Yeast
Cellulose Food Casing Manufacturing
Vegetable Oil Production

Pharmaceutical Production Processes

Pharmaceuticals Production

Polymers and Resins Production

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

Production of Inorganic Chemicals

Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Uranium Hexafluoride Production

Production of Organic Chemicals

Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical

Miscellaneous Processes

Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Cellulosic Sponge Manufacturing
Chelating Agents Production
Chlorinated Paraffins
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Products Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Cleaning (Perchloroethylene)—Dry-to-dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Tanning and Finishing Operations
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Polyether Polyols Production
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production

Categories With Area Sources Only

Agriculture Chemicals & Pesticides Manufacturing
Autobody Refinishing Paint Shops
Cadmium Refining & Cadmium Oxide Production
Cyclic Crude and Intermediate Production
Hospital Sterilizers
Industrial Inorganic Chemical Manufacturing
Industrial Organic Chemical Manufacturing
Lead and Acid Battery Manufacturing
Medical Waste Incinerators
Mercury Cell Chlor-Alkali Plants
Miscellaneous Organic Chemical Manufacturing (MON)
Municipal Waste Combustors
Other Solid Waste Incinerators (Human/Animal Cremation)
Plastic Materials and Resins Manufacturing
Plating and Polishing
Pressed and Blown Glass & Glassware Manufacturing
Secondary Copper Smelting
Secondary Nonferrous Metals
Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)
Stationary Internal Combustion Engines
Synthetic Rubber Manufacturing
Wood Preserving

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine your source category-specific section 112 regulation. Additional information on the listing of source categories is available at *http://www.epa.gov/ttn/atw/socatlst/socatpg.html.* If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2002–0044. The official public docket is the collection of materials that is available for public viewing in the General Provisions Docket at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search'' and key in Docket ID No. OAR–2002–0044, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0044, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official

public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: General Provisions Docket, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments, EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0044.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0044, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention General Provisions Docket, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments, Docket ID No. OAR–2002–0044.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (MD–C404–02), Attention Steve Fruh, U.S. EPA, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2002–0044. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Concurrent Rulemaking: In a proposed rule dated August 13, 2002 (67 FR 52674), EPA solicited comments on the incentives designed for Performance Track member facilities. These proposed amendments contain additional incentives for Performance Track member facilities. Persons interested in doing so are encouraged to comment on the additional incentives as they specifically relate to the MACT incentives in the Performance Track proposed rule. It is EPA's intent to finalize both proposed rules as they relate to the NESHAP General Provisions in one final rulemaking. In the final rule, EPA intends to reconcile the two different definitions of ''pollution prevention'' and ''source at a Performance Track member facility'' as they appear in these proposed amendments and in the Performance Track proposed rule by adopting the definitions contained in these proposed amendments.

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

I. Summary of Proposed Action

We are proposing to amend the NESHAP General Provisions in 40 CFR part 63, subpart A. The individual NESHAP (which are frequently referred to as MACT standards) are codified as subparts within 40 CFR part 63. We are proposing two options:

- *Option 1:* If a facility completely eliminates all HAP emissions from all sources of emissions regulated by the subpart, it could request to no longer be subject to that subpart. This option would be available only where the subpart does not already require complete elimination of HAP emissions from any of the regulated sources of emissions.
- *Option 2:* If a facility uses P2 to reduce HAP emissions either to the level required by the subpart, or below, it could request ''P2 alternative compliance requirements.'' The alternative compliance requirements would include monitoring, recordkeeping, reporting, and/or other requirements which match the P2 measures implemented by the facility. Alternative emission limits could not be included. If approved, the alternative compliance requirements would replace specified requirements in the subpart. This option would be available for any regulated portion of the facility; it would not be necessary for the facility to implement P2 on every source of emissions that is subject to the subpart. Under this option, the facility would remain subject to the subpart, but some of the requirements would be changed.

Either option would be effective only as long as the facility continued to use the P2 measures and to eliminate or reduce HAP emissions as described in the approved request. If the facility discontinued the P2 measures or failed to eliminate or reduce HAP emissions as approved, all applicable requirements of the subpart would again apply immediately, and the facility would be required to comply beginning on that date.

We are also proposing additional incentives for sources at facilities that are members of the Performance Track program.

II. Background

Consistent with the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109), it is our policy to promote and encourage P2 in all our programs. We seek to reduce HAP emissions with alternative approaches that achieve results in innovative and sustainable ways. Preventing pollution at the source is our strategy of first choice. Pollution prevention strategies

allow facilities the advantage of meeting pollution reduction goals in ways that are most cost effective and appropriate for their individual situations. Furthermore, State and local air pollution agencies have urged us on numerous occasions to do more to encourage P2 in the MACT standards program. For these reasons, we are proposing revisions to the part 63 General Provisions which encourage the development and implementation of P2 measures at facilities that are already subject to NESHAP subparts. By working with State and local agencies in a series of meetings, we have developed this proposal to further this goal.

We are also proposing provisions that would further promote improved environmental performance through incentives that are only available to facilities participating in the Performance Track program. For example, the Administrator will designate a central contact within the EPA to facilitate and expedite the review of a Performance Track member facility's request for pollution prevention alternatives. The Performance Track program was created to recognize, provide incentives, and reward individual facilities that go beyond compliance in their environmental operations and management. The Performance Track program is based on the following premises: Better environmental performance warrants different oversight; the EPA should induce facilities to perform beyond basic compliance; environmental accomplishments should be recognized and rewarded; private and public resources should be used efficiently to these ends; and demonstrated innovative ideas should be included in regulations.

The Agency selects its Performance Track members for entry into the program based on certain criteria. Member facilities must:

- Have adopted and implemented an environmental management system that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public, and report to the public on the facilities' performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, member facilities must commit to providing annual reports on the status of their efforts to achieve their commitments to making improvements in specific environmental categories and to maintaining their qualifications as program participants.

In line with these premises and criteria, we are proposing provisions that would provide additional incentives only to those sources at facilities that are members of the Performance Track program.

III. Proposed Amendments to the Part 63 General Provisions

We are proposing to amend the General Provisions for the MACT-based NESHAP, which are codified at 40 CFR part 63, subpart A. The General Provisions establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP subparts by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, and recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA Administrator must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing NESHAP. The General Provisions apply to every facility that is subject to a NESHAP subpart, except where specifically overridden by that subpart.

We are proposing to add definitions for ''pollution prevention'' and ''source at a Performance Track member facility'' to § 63.2 of the General Provisions.

The proposed amendments would also add two sections to the General Provisions. New § 63.17 (Option 1) would provide a mechanism for a facility that uses P2 to eliminate completely all HAP emissions regulated under a NESHAP subpart to become exempt from that subpart. New § 63.18 (Option 2) would provide a mechanism enabling a facility that uses P2 to reduce HAP emissions to at least the level required by a NESHAP subpart to replace select requirements of the subpart with requirements appropriate to the P2 measures.

A. Definitions

We are proposing to add the following definitions for ''pollution prevention'' and ''source at a Performance Track member facility'' to § 63.2 of the General Provisions:

Pollution prevention means *source reduction* as defined under the Pollution Prevention Act. The definition is as follows:

(1) *Source reduction* is any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

(2) The term *source reduction* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(3) The term *source reduction* does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

This definition is taken directly from the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). We are proposing to add this definition to clarify the types of actions that we intend to consider in qualifying a facility for Option 1 or 2.

The Pollution Prevention Act establishes the following hierarchy for managing pollution and wastes: source reduction, recycling, treatment, and disposal. Because Congress' primary focus in this statute was source reduction, we are proposing to limit availability of Options 1 and 2 to facilities whose P2 measures qualify as source reduction.

Source at a Performance Track member facility means a major or area source located at a facility which has been accepted by EPA for membership in the Performance Track program (as described at *http://www.epa.gov/performancetrack,* formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

B. Option 1: Facilities That Implement Pollution Prevention To Eliminate HAP Emissions Subject to Regulation Under a NESHAP Subpart

We are proposing to add § 63.17 to the General Provisions to address facilities that were subject to a NESHAP subpart on the first applicable compliance date, and which subsequently have implemented P2 measures that eliminate all HAP emissions that are regulated under that subpart. Under the proposed provision, such facilities could submit a request to the Administrator to no longer be subject to the subpart. If approved, the facility would no longer be subject to the subpart, as long as it does not resume emitting HAP from the regulated source(s) of emissions.

A facility would be eligible for Option 1 if the following three conditions are met for a particular NESHAP subpart:

- The facility was subject to the subpart on the first compliance date that applied to the facility under the subpart.
- The facility has implemented P2 measures which ensure that no HAP is emitted from any source of emissions that is subject to any requirement under the subpart.
- None of the emission limitations under the subpart already require the complete elimination of HAP emissions.

By ''first applicable compliance date'' we mean the first date by which a source must comply with an emission limitation or other substantive regulatory requirement (*i.e.*, emission limit, leak detection and repair program, work practice standard, housekeeping measure, *etc.,* but not a notice requirement) in the applicable NESHAP subpart. For an existing major source, the first applicable compliance date is the compliance date defined in the subpart for such sources, typically 3 years after the effective date (*i.e.*, promulgation date) of the subpart. (This is also true for subparts that apply to area sources.) For subparts that have multiple and staggered compliance dates for different emission limitations, this means the first such date. For a new source, the first applicable compliance date is either the date of startup or the effective date of the subpart, whichever is later.

We have included this condition because this mechanism is intended primarily for facilities that have initially been subject to a NESHAP subpart and complied through conventional means, such as add-on emission control equipment or mandated work practices. In this way, we intend to encourage and reward the development and implementation of P2 measures for such facilities.

As a general matter, we already encourage facilities to develop and implement P2 measures prior to the first applicable compliance date. Facilities that eliminate HAP through P2 (or otherwise) prior to the first compliance date avoid becoming subject to major source NESHAP subparts. The proposed General Provisions section (§ 63.17) would extend the same benefits to facilities that implement P2 measures to eliminate HAP after this initial window of opportunity. This condition would require the facility to use P2 to reduce HAP emissions to zero for all the sources of emissions subject to any requirement under a particular NESHAP subpart. For purposes of this proposal, ''pollution prevention'' means ''source reduction'' as defined in the Pollution Prevention Act. As discussed earlier in this preamble, we are proposing to add this definition to § 63.2 of the General Provisions.

By ''sources of emissions'' we mean all emission units or processes, which includes sources of fugitive emissions as well as sources with identifiable points of emissions (such as stacks). ''Subject to any requirement under the subpart'' refers to sources of emissions to which any type of requirement applies under the subpart. This includes sources of emissions to which emission limitations apply. ''Emission limitations'' include operation and maintenance, design, equipment, work practice, and operational requirements, as well as emission limits, opacity limits, operating limits, and visible emissions limits. Moreover, this includes sources of emissions that are below a cutoff in the subpart so that an emission limitation does not apply, but monitoring or recordkeeping requirements apply.

Option 1 would apply subpart by subpart. That is, a facility could use this mechanism to cease being subject to one NESHAP subpart, even if it continued to emit HAP from equipment that is subject to a different NESHAP subpart.

Option 1 would be ''all or nothing.'' A facility would not be eligible to use this mechanism if it eliminated HAP emissions from only some of the sources of emissions that are regulated under the NESHAP subpart. For example, if a subpart includes multiple affected sources, a facility could not use this provision to become exempt from the subpart for individual affected sources. However, such facilities could likely use the second option to obtain reduced monitoring, recordkeeping, and reporting requirements for those affected sources or individual sources of emissions for which they have eliminated HAP emissions.

Option 1 could be used only when none of the emission limitations in the subpart require the facility to completely eliminate HAP emissions. Any zero HAP limitation could only be achieved through P2. (Add-on controls, work practices, *etc.,* can never achieve zero HAP emissions as long as HAP are used or produced.) Thus, a facility that implements P2 to eliminate HAP emissions from the subject source of emissions is simply meeting the required limitation. We do not believe that such a facility should be exempted from an emission limitation, and the associated monitoring, recordkeeping, and reporting, if the subpart already has a requirement to meet a zero HAP limitation.

Furthermore, we believe that subparts that include a requirement to meet a zero HAP emission limitation contain associated compliance provisions (such as testing, monitoring, recordkeeping, and reporting) that are appropriate for that limitation, and that no further relief is warranted. However, if a facility implements P2 measures that were unanticipated during development of the subpart, rendering the subpart's compliance provisions inappropriate, the facility could use the second option to obtain appropriate provisions.

It should be noted that requirements for zero visible emissions or zero opacity do not qualify as ''zero HAP emission limitations.'' Such limits can be met without completely eliminating HAP from a process. Thus, such limits do not preclude a source from using this option.

Under Option 1, a facility could submit a written request to the Administrator to no longer be subject to the subpart at any time after the subpart's first applicable compliance date. As defined in § 63.2 of the General Provisions, ''Administrator'' means the EPA Administrator or his or her authorized representative, such as a State that has been delegated the authority to implement the provisions of part 63. For Performance Track member facilities, the Administrator would designate a central contact within the EPA to facilitate and expedite the review of such requests for a P2 exemption. Owners and operators of Performance Track member facilities would be encouraged to submit their requests to the designated Performance Track contact within EPA in addition to the EPA Administrator.

The request may include any information that the facility considers useful in demonstrating that the subpart should no longer apply. At a minimum,

the written request would be required to include these six items:

- A statement identifying the NESHAP subpart and the operations that are currently subject to the subpart, and indicating that the facility is applying to no longer be subject to the subpart.
- A description of the P2 measures used to eliminate HAP emissions and a demonstration that the measures qualify as P2 as defined in § 63.2.
- A demonstration that the P2 measures have eliminated all HAP emissions from each and every source of emissions subject to an emission limitation under the subpart.
- Documentation that the subpart does not include a limit of zero HAP emissions for any of the sources of emissions subject to an emission limitation under the subpart.
- A certification (signed by a responsible official) that the facility will not resume emitting HAP without notifying the Administrator in writing at least 30 days prior to doing so.
- A certification (signed by a responsible official) agreeing that, upon resuming HAP emissions, the relevant subpart again applies, and the facility must immediately comply with the requirements of the subpart.

The first four items that would be required simply identify the NESHAP subpart and the affected equipment, indicate that the facility wishes to use this provision to be exempt from the subpart, and demonstrate that the facility meets the eligibility requirements. The fifth is an enforceable commitment by the facility not to resume emitting HAP from the affected operations without giving at least 30 days written notice. The sixth is an enforceable acknowledgment by the facility that if it resumes emitting HAP from the affected operations, the relevant subpart applies immediately and the facility would be required to comply with the subpart immediately upon beginning to emit HAP.

A facility that submits a request under Option 1 would remain subject to the NESHAP subpart in question until the Administrator notifies it in writing that the request to no longer be subject to the subpart has been approved. When the Administrator receives a request under Option 1, he or she would notify the facility in writing of approval or intent to deny approval within 45 days after receiving the original request. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator intends to disapprove the request, he or she would include the following three items in the written notification:

- Notice of the information and findings on which the intended disapproval is based.
- Notice of the opportunity for the facility to present additional information before final action on the request.
- A deadline for the facility to present the additional information.

If the facility fails to provide additional information by the deadline established above, the Administrator would disapprove the request. If the facility provided additional information by the deadline, the Administrator would notify the facility of approval or disapproval within 45 days after receiving the information. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator finds that the facility meets the requirements under Option 1, he or she would approve the facility's request to no longer be subject to the subpart. However, the Administrator could condition approval on additional compliance measures as deemed necessary. The Administrator would transmit written approval to the facility that includes the following components:

- Identification of the subpart that no longer applies.
- Identification of the sources of emissions to which the subpart would otherwise apply.
- Any additional compliance measures deemed necessary.
- A requirement that the facility provide written notice to the Administrator at least 30 days prior to beginning to emit HAP from the designated sources of emissions.
- A condition that the applicable requirements of the subpart will again apply to the designated sources of emissions on the date that the facility begins to emit HAP from the sources of emissions, and that the facility must comply with the requirements of the subpart on that date. This written approval would serve as an enforceable agreement between the enforcing agency and the facility.

We believe that 45 days is a reasonable period for the Administrator to review a request and determine whether it should be approved or denied. We also believe that a reduced period of 30 days is a reasonable period of time for the Administrator to review a request from a Performance Track member facility and determine whether it should be approved or denied, particularly with the support of a designated central contact within EPA to facilitate and expedite the Performance Track request. Performance Track member facilities would be accorded a shorter review period in recognition of their top environmental performance, because of EPA's increased familiarity with operations at these member facilities, and to provide an incentive to promote increased participation in the Performance Track program. However, we have proposed that a failure to meet this deadline should not be deemed approval because we believe that an action of this importance should not go into effect without affirmative approval.

After a facility's request has been approved, the facility would be required to keep the commitments it agreed to during the request/approval process. These include the commitment not to emit HAP from the affected sources of emissions without giving at least 30 days prior notice and the requirement to carry out any additional compliance measures upon which the approval was conditioned.

In addition, we believe that the facility should keep records sufficient to show that it is meeting its commitments. Nevertheless, we have not proposed that the facility must accept specified monitoring, recordkeeping, and reporting requirements for this purpose. We believe that the situation after an approval is analogous to that of any other facility in a source category for which a NESHAP subpart is promulgated. These facilities would be required to determine whether they are subject to the subpart, and, if not, they would be required to produce documentation to satisfy the Administrator that they are not subject when asked to do so. If a facility incorrectly asserted that it was not subject to the subpart, it would be subject to an enforcement action for failing to meet the requirements of the subpart.

This being said, we also acknowledge that all facilities are unique. We are proposing that the Administrator may condition approval on additional compliance measures, and these may include monitoring, recordkeeping, and/or reporting as warranted by individual circumstances. However, we do not think the level required for demonstrating continuous compliance under a NESHAP subpart is likely to be appropriate here.

If a facility resumes HAP emissions from the affected operations, the NESHAP subpart would apply to the

facility immediately, and the facility would be required to comply with the subpart immediately upon emitting HAP. This would be a condition of approval, and the facility must agree to it during the request/approval process. If the facility fails to give 30 days notice of its intent to emit HAP from the affected operations and/or fails to comply with the subpart upon emitting HAP, it could be subject to an enforcement action.

If the facility has no reason to be subject to CAA title V permitting requirements after approval of a request under Option 1, it could apply to its permitting authority to rescind the permit. This would be the case if the only reason that a facility was required to have a title V permit was the fact that it was subject to the NESHAP subpart that no longer applies after the approval.

If the facility continued to be subject to title V for other reasons, such as major status for HAP or other pollutants, the ''applicable requirements'' that come out of the request/approval process would be added to the title V permit. These would include the requirement not to emit HAP from the affected operations without 30 days notice; the stipulation that the NESHAP subpart applies, and that the facility must comply immediately upon emitting HAP; and any additional compliance measures imposed as a condition of approval. Similarly, the requirements of the subpart itself would be removed from the title V permit.

From the perspective of part 63, the facility would no longer be subject to the subpart upon receiving written approval of its request from the Administrator. We believe that the facility should generally be able to implement the approved change in status immediately, with any process needed to revise the title V permit taking place afterwards.

C. Option 2: Facilities That Implement Pollution Prevention To Reduce HAP Emissions To at Least the Level of a NESHAP Subpart

We are proposing to add § 63.18 to the General Provisions to address facilities that are subject to a NESHAP subpart on the first applicable compliance date, and have subsequently implemented P2 measures to achieve and maintain HAP emissions reductions equivalent to or better than the MACT level of control for some or all of the regulated sources of emissions. Under the proposed Option 2, such facilities could submit a request to the Administrator for P2 alternative compliance requirements.

If the request is approved, the alternative compliance requirements would replace requirements specified in the subpart. The P2 alternative compliance requirements would remain in force as long as the facility continues to use the P2 measures and maintains the HAP emissions reductions described in the approved request.

A facility would be eligible for Option 2 if the following two conditions are met for a particular NESHAP subpart:

- The facility was subject to the subpart on the first compliance date that applied to the facility under the subpart.
- The facility has implemented P2 measures to reduce HAP emissions to at least the level required under the subpart for one or more of the regulated sources of emissions, and continues to maintain those reductions.

The first condition is the same as presented above in Option 1 for facilities that eliminate regulated HAP emissions entirely. The second condition would require the facility to use P2 to reduce HAP emissions, to at least the level of the subpart requirements, for at least one source of emissions that is subject to an emission limitation under the subpart. Option 2 differs from Option 1 in that this condition would not require the facility either to completely eliminate HAP emissions or to apply P2 across all the sources of emissions regulated under the subpart. Instead, the facility could apply for P2 alternative compliance requirements for any regulated sources of emissions on which it has implemented P2 and achieved or exceeded the HAP emissions reductions required under the subpart.

A facility could submit a written request to the Administrator for P2 alternative compliance requirements at any time after the subpart's first applicable compliance date. As defined in § 63.2 of the General Provisions, ''Administrator'' means the EPA Administrator or his or her authorized representative, such as a State that has been delegated the authority to implement the provisions of part 63. For Performance Track member facilities, the Administrator would designate a central contact within the EPA to facilitate and expedite the review of such requests for P2 alternative requirements. Owners and operators of Performance Track member facilities would be encouraged to submit their requests to the designated Performance Track contact within EPA in addition to the EPA Administrator.

The request may include any information that the facility considers useful to demonstrate that alternative compliance requirements are justified. At a minimum, the proposed rule would require that the written request include these nine items:

- A statement identifying the NESHAP subpart and the operations that are subject to the subpart, and indicating that the facility is applying for P2 alternative compliance requirements.
- A description of each source of emissions for which the facility is requesting P2 alternative compliance requirements.
- A description of the P2 measures used to reduce HAP emissions, and a demonstration that the measures qualify as P2 as defined in § 63.2. (This definition is proposed to be added as part of this rulemaking; *see* section III.A of this document.)
- A demonstration that the P2 measures have reduced HAP emissions from each source of emissions for which alternative compliance requirements are being requested to at least the level that is required by the subpart.
- Proposed specific P2 alternative compliance requirements for the designated sources of emissions which ensure that the commitment both to continue using the P2 measures and to maintain the described HAP emissions reductions is enforceable as a practical matter, along with a demonstration that the proposed alternative requirements will effectively assure continuous compliance with the commitment.
- A citation of each applicable requirement in the subpart and General Provisions that the facility proposes to replace with the P2 alternative compliance requirements, accompanied by an explanation of how the proposed alternative requirements satisfy the intent of the replaced requirements and/or why the replaced requirements are not necessary.
- A certification (signed by a responsible official) that the facility will not discontinue the P2 measures or fail to maintain the HAP emissions reductions described in the request without notifying the Administrator in writing at least 30 days prior to doing so.
- A certification (signed by a responsible official) agreeing that, upon discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request, the subpart again applies and the facility must comply immediately with all of the requirements of the subpart.
- A certification (signed by a responsible official) that the facility is subject to all applicable requirements of the subpart not proposed to be replaced by P2 alternative compliance requirements.

The first four required items would simply identify the NESHAP subpart and the affected equipment, indicate that the facility wishes to use this provision to obtain P2 alternative compliance requirements, and demonstrate that the facility meets the eligibility requirements. For the fifth and sixth items, the facility would propose and justify the alternative compliance requirements and identify the requirements in the subpart that the alternative requirements would replace. The seventh and eighth items certify that the facility acknowledges it would be required to continue the approved alternative P2 measures, and understands the consequences for failing to do so. The ninth item certifies that the facility will continue to comply with those portions of the subpart that were not replaced by approved alternative P2 measures.

Under Option 2, approved P2 alternative compliance requirements would actually replace the compliance requirements in the NESHAP subpart and become the facility's applicable requirements under part 63 for the subpart. However, unlike Option 1, the facility would remain subject to the subpart. Thus, the facility would be required to continue to meet all requirements of the subpart for any regulated sources of emissions not included in the request, and it would remain subject to title V permitting requirements.

To provide certainty to both the facility and the enforcement agency as to exactly what requirements apply to each regulated source of emissions, the proposed rule would require that the facility's request clearly tie the proposed P2 alternative compliance requirements to the designated sources of emissions. Where appropriate, the facility could propose different alternative requirements for different sources of emissions, as long as applicability is clear. In addition, the facility would be required to specify exactly which requirements of the subpart and General Provisions would be replaced by the proposed P2 alternative compliance requirements, and for which sources of emissions.

For its P2 alternative compliance requirements, the facility would be required to propose measures that assure compliance with its commitments both to continue using the P2 measures and to maintain the HAP emissions reductions described in the request. Because the facility would remain subject to the subpart, the alternative requirements would be sufficient to demonstrate continuous compliance.

To demonstrate and assure continuous compliance, we expect that the P2 alternative compliance requirements will include monitoring, recordkeeping, and reporting requirements. In this context, we mean ''monitoring'' in a broad sense, which could involve simply tracking the purchases and composition of the materials used in the operations covered by the alternative requirements. Depending on the situation, appropriate monitoring may involve more rigorous measures, up to and including continuous instrumental monitoring of process or control device operating parameters or of the exhaust stream. In general, the monitoring program should gather relevant data with sufficient frequency and accuracy to form a conclusive basis for assessing whether the facility maintained continuous compliance with its commitments for P2 and HAP emissions reductions. The monitoring program should include appropriate quality assurance and quality control procedures to ensure the continued reliability of monitoring data.

Similarly, the facility would be required to propose recordkeeping requirements sufficient to document conclusively whether the facility maintained continuous compliance. One existing recordkeeping requirement in the General Provisions that we believe generally should not be replaced by alternative requirements is § 63.10(b)(1), which governs availability and retention of records. The facility's proposed reporting requirements would include periodic reporting to disclose periods of noncompliance or to confirm continuous compliance, as applicable, for each reporting period. Reports also should address the performance of the facility's monitoring program. We expect that alternative reporting requirements typically will conform to the schedule of the existing requirements for the sources of emissions not covered by the P2 alternative compliance requirements, and that the facility would submit combined reports for all of the sources of emissions subject to the subpart.

The facility should not overlook startup, shutdown, and malfunction (SSM) requirements in its request for P2 alternative compliance requirements. It may need to revise its SSM plan, and may want to propose alternative SSM recordkeeping or reporting requirements to match its P2 measures.

The mechanics of the review process under Option 2 would be identical to the process under Option 1. A facility that submits a request under Option 2 would remain subject to all the applicable requirements of the NESHAP subpart in question until the Administrator notifies it in writing that the request for P2 alternative compliance requirements has been approved. When the Administrator receives a request under Option 2, he or she would notify the facility in writing of approval or intent to deny approval within 45 days after receiving the original request. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator intends to disapprove the request, he or she would include the following three items in the written notification:

- Notice of the information and findings on which the intended disapproval is based.
- Notice of the opportunity for the facility to present additional information before final action on the request.
- A deadline for the facility to present the additional information.

If the facility failed to provide additional information by the deadline established above, the Administrator would deny the request. If the facility provided additional information by the deadline, the Administrator would notify the facility of approval or disapproval within 45 days after receiving the information. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator found that the facility meets the requirements under Option 2, he or she would approve the facility's request for P2 alternative compliance requirements. However, the Administrator could condition approval on additional compliance measures as deemed necessary. The Administrator would transmit written approval to the facility that would include the following components:

- Identification of the specific regulated sources of emissions covered by the approval.
- The P2 alternative compliance requirements that apply, including any additional compliance measures deemed necessary. (If necessary, the alternative requirements that apply to different sources of emissions would be clearly specified.)
- The applicable requirements of the subpart that no longer apply to the designated sources of emissions. (Again, requirements would be differentiated by source of emissions, if necessary.)

• A requirement that the facility provide written notice to the Administrator at least 30 days prior to discontinuing the P2 measures and/or failing to maintain the HAP reductions described in the request.

• A condition that the applicable requirements of the subpart will again apply to the designated source(s) of emissions on the date that the facility discontinues the P2 measures and/or fails to maintain the HAP reductions described in the request, and that the facility must comply on that date. This written approval would serve as an enforceable agreement between the enforcing agency and the facility.

As noted previously, we believe that 45 days is a reasonable period for the Administrator to review a request and determine whether it should be approved or denied. We also believe that a reduced period of 30 days is a reasonable period of time for the Administrator to review a request from a Performance Track member facility and determine whether it should be approved or denied, particularly with the support of a designated central contact within EPA to facilitate and expedite the Performance Track request. Performance Track member facilities would be accorded a shorter review period in recognition of their top environmental performance, because of EPA's increased familiarity with operations at these member facilities, and to provide an incentive to promote increased participation in the Performance Track program. However, we are proposing that a failure to meet this deadline should not be deemed approval because an action of this importance should not go into effect without affirmative approval.

In implementing Option 2, the Administrator will remain cognizant of the fact that the purpose of these provisions is to provide an incentive for facilities to develop and implement P2 measures. At the same time, the reviewing agency must ensure that HAP emissions will be reduced to at least the level of MACT, and that the P2 alternative compliance requirements will assure compliance with the facility's commitments in a practically enforceable way. Option 2 is not intended to be a mechanism for obtaining an exemption from necessary compliance requirements.

As a first step, a facility would submit a clear and complete request for P2 alternative compliance requirements. At a minimum, the request would include the nine components previously listed. The facility would be free to submit any additional information that it believes will help justify the alternative requirements.

The facility and the reviewing agency must have a common understanding of the sources of emissions designated for P2 alternative compliance requirements, the proposed alternative requirements (*i.e.*, the actions that the facility would be required to carry out), and the provisions of the NESHAP subpart and General Provisions that would no longer apply. In addition, three unambiguous certifications, signed by a responsible official of the facility (as defined in § 63.2 of the General Provisions) would be included in the request. The reviewing agency would not grant a request until these aspects are clearly and completely specified in writing.

A key component of the request would be a clear and comprehensive description of the P2 measures that the facility has implemented and a demonstration that these measures meet the definition of ''pollution prevention'' in the proposed amendments. As detailed earlier (in Section III A.), ''pollution prevention'' means ''source reduction'' as defined in the Pollution Prevention Act.

Another key component of the request would be a demonstration that the P2 measures have achieved, and will maintain, HAP emissions reductions equivalent to or better than the MACT level of control. Because of the uniqueness of each situation, the facility should describe operations before and after implementation of the P2 measures so as to demonstrate that the P2 measures obtain equivalent (or better) results. Facilities have detailed knowledge of their operations and, as such, are in the best position to determine how to make this demonstration.

We will encourage State, local, and tribal agencies that receive requests for P2 alternative compliance requirements to collaborate with the EPA Regional Offices and Headquarters in reviewing these requests. In this manner, we expect to build a common awareness of the issues that arise as a basis for forging a common approach to review and approval.

We invite comment on this approach to demonstrating that P2 measures reduce HAP emissions to at least the level required by the NESHAP subpart. Commenters who believe that we should provide more specific criteria or guidance on this demonstration should provide specific suggestions on appropriate criteria/guidance.

In addition to proposing clear P2 alternative compliance requirements, the proposed rule would require that the request include a commitment from the facility to continue using the P2 measures and to maintain the described HAP emissions reductions. To be approved, the alternative requirements must be adequate to demonstrate and document continuous compliance.

For example, if a process has been modified to make it inherently less polluting and incapable of emitting HAP at or near the level of the MACT emission limit, the alternative compliance requirements might consist of documenting and periodically certifying that the process continues to be operated as described in the request. If the P2 measures consist of switching raw materials to reduce HAP emissions, tracking raw material purchases and HAP content may be adequate to demonstrate continuous compliance.

The margin of compliance achieved through the P2 measures can be an important consideration in developing proposed alternative requirements. When HAP emissions are at or near the emission limit, greater accuracy would typically be desired than when emissions are well below allowable levels and the likelihood of exceeding the limit is low. Many existing regulations and policies are based on this principle. For example, the General Provisions already provide a mechanism whereby a facility with a continuous emission monitoring system may apply for a less-rigorous alternative to the relative accuracy test when its emission rate is less than 50 percent of the applicable emission limit. (*See* § 63.8(f)(6).)

Many subparts include emission limits and/or compliance options based on P2. For such subparts, we do not believe that simply meeting these limits automatically entitles a facility to P2 alternative compliance requirements, since the requirements are based on the use of P2. In general, we believe that the existing requirements are appropriate in such cases; however, there may be situations where an alternative requirement is equally appropriate. For example, the reviewing agency may wish to consider approving alternative compliance requirements where a facility's P2 measures have reduced HAP emissions to well below the emission limit (*i.e.*, where the margin of compliance is large). The margin of compliance is relevant because we have typically developed compliance requirements based on what is needed to assure continuous compliance when a facility operates at or near the emission limit. In addition, a facility that has introduced P2 measures that were not considered during development of the applicable subpart's compliance requirements is a prime

candidate for P2 alternative compliance requirements.

After a facility's request has been approved under Option 2, the facility would keep the commitments it agreed to during the request/approval process. This includes the commitment to neither discontinue the P2 measures, nor fail to maintain the HAP emissions reductions described in the request without giving at least 30 days prior notice. It also includes the commitment to comply with the NESHAP subpart for all sources of emissions not designated in the request and approval, and the commitment to carry out the approved P2 alternative compliance requirements (including any added by the Administrator as a condition of approval).

After approval, the P2 alternative compliance requirements would replace the identified portions of the NESHAP subpart and General Provisions for the designated sources of emissions. They would become the enforceable requirements for the facility under 40 CFR part 63 for the subpart.

Note that the facility would be required to maintain the HAP emissions reductions described in its request and approved by the Administrator, even if this requirement is more stringent than the subpart's emission limit. This would be a condition of approval, and the facility would be required to agree to it during the request/approval process. Because the facility's margin of compliance with the MACT emission limits may have been an important consideration in development and approval of its P2 alternative compliance requirements, it is important that the compliance margin be maintained. Alternative compliance requirements approved based on a large margin of compliance may not be adequate to demonstrate continuous compliance during times when the facility operates closer to the emission limit in the subpart. Thus, facilities should be aware that they will be held to the HAP reductions described in their requests. If necessary, they may want to build in some flexibility by claiming less HAP reductions than they are able to obtain with the P2 measures under optimum current operating conditions.

If a facility discontinued the P2 measures and/or failed to maintain the HAP emissions reductions described in the approved request without giving at least 30 days prior notice, it may be subject to an enforcement action for violating the commitments it agreed to as a condition of approval. In addition, all portions of the NESHAP subpart would apply to the facility immediately, and the facility would be required to comply with the subpart immediately upon discontinuing the P2 measures and/or failing to maintain the HAP reductions described in the approved request, whether or not the facility gave the required prior notice. The facility may be subject to an enforcement action if it does not comply with all portions of the NESHAP subpart immediately.

A facility operating under approved P2 alternative compliance requirements could submit a request, at any time, to modify the alternative requirements. The request may involve changes to any combination of the approved P2 measures, levels of HAP reductions, and alternative compliance requirements.

A request for a modification would include, at a minimum, the same information required for an initial request for P2 alternative compliance requirements. The facility may include any additional information that it believes will help demonstrate that modifications are justified.

The Administrator would review the request and approve or disapprove it according to the procedures for an initial request. The facility would remain subject to the existing P2 alternative compliance requirements and all associated commitments until it received written approval of the requested modifications.

A facility that receives approval of P2 alternative compliance requirements would remain subject to the NESHAP subpart. As a result, the facility also would remain subject to title V permitting requirements.

The ''applicable requirements'' that come out of the request/approval process would be added to the title V permit. These would include the following:

- The approved P2 alternative compliance requirements (including any requirements added by the Administrator as a condition of approval), with associated sources of emissions.
- Citations for the subpart and General Provisions requirements that have been replaced by the P2 alternative compliance requirements, with associated sources of emissions.
- A requirement to give at least 30 days notice prior to discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request.
- A stipulation that all portions of the subpart apply, and the facility must comply immediately upon discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request.

Similarly, any requirements in the subpart which no longer apply to the facility would be removed from the title V permit. From the perspective of 40 CFR part 63, the facility would be subject to the P2 alternative compliance requirements (and not to the replaced NESHAP subpart and General Provisions requirements) upon receiving written approval of its request from the Administrator. As noted previously, we believe that the facility should generally be able to implement the approved change in status immediately, with the needed title V permit revisions taking place afterwards.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

It has been determined that these proposed amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the proposed amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2099.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-

mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed amendments would require that owners or operators who wish to apply for P2 compliance alternatives to submit a written request that provides all information needed to document the P2 measures that have been implemented and the alternative compliance provisions that are requested. Upon approval of the request, the owner or operator would be required to implement any alternative monitoring, reporting, and recordkeeping requirements associated with the P2 compliance alternative. Participation in the program of P2 compliance alternatives is voluntary. Only facilities that qualify for a reduced burden associated with monitoring, reporting, and recordkeeping are expected to participate.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to reduce the burden associated with existing MACT standards by 82,160 labor hours per year at a total annual cost reduction of $4.7 million. The average burden reduction per facility is 137 hours per year. This estimate includes savings for facilities that completely eliminate all HAP emissions and qualify for an exemption from the applicable standards. The estimate also includes savings from reduced monitoring, reporting, and recordkeeping for facilities that implement P2 measures for specific emission points that reduce HAP emissions to, or below, the level required by the applicable standards. There are no capital or startup costs associated with the proposed amendments.

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

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA (2136), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after May 15, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by June 16, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed amendments.

C. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; P2 alternative compliance requirements are strictly voluntary. In addition, we expect that any sources implementing P2 compliance alternatives will experience cost savings that will outweigh the cost of requesting the alternative requirements.

The only mandatory cost that would be incurred by air pollution control agencies would be the cost of reviewing sources' requests for P2 compliance alternatives. No small governmental jurisdictions operate their own air pollution control agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources with approved P2 alternative compliance requirements.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities

and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

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

EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments; P2 alternative compliance requirements are strictly voluntary. In addition, P2 compliance alternatives are expected to result in reduced burden on any source that obtains approval of such alternative requirements. Under the proposed amendments, a State, local, or tribal air pollution control agency to which we have delegated section 112 authority would be required to review any requests for P2 compliance alternatives submitted by sources in its jurisdiction. However, such requests are not expected to be plentiful and will not approach the $100 million annual threshold. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources with approved P2 alternative compliance requirements. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

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

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although the proposed amendments would require State air pollution control agencies which have voluntarily taken delegation of the part 63 program to conduct case-by-case reviews where sources elect to apply for P2 alternative compliance requirements, the burden on States will not be substantial. In addition, we expect that the overall effect of the proposed amendments will be to reduce the burden on State agencies as their oversight obligations become less demanding for sources with approved P2 alternative compliance requirements. Thus, Executive Order 13132 does not apply to these proposed amendments. Although section 6 of Executive Order 13132 does not apply to the proposed amendments, we consulted extensively with State and local air pollution control officials during the development of this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal; P2 alternative compliance requirements are strictly voluntary. In addition, P2 compliance alternatives are expected to result in reduced burden on any source that obtains such alternative requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated section 112 authority would be required to review any requests for P2 compliance alternatives submitted by sources in its jurisdiction. However, such requests are not expected to be plentiful, so the effects will not be substantial. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources with approved P2 alternative compliance requirements. Thus, Executive Order 13175 does not apply to these proposed amendments.

However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA

specifically solicits comment on the proposed amendments from tribal officials.

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

Executive Order 13045, entitled ''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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks. Furthermore, the proposed amendments have been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

The proposed amendments are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed amendments, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in the proposed amendments.

List of Subjects in 40 CFR Part 63

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

Dated: May 8, 2003.

Christine Todd Whitman,

Administrator.

For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.2 is amended by adding, in alphabetical order, definitions for the terms *Pollution prevention* and *Source at a Performance Track member facility* to read as follows:

§ 63.2 Definitions.

* * * * *

Pollution prevention means *source reduction* as defined under the Pollution Prevention Act (42 U.S.C. 13101–13109). The definition is as follows:

(1) *Source reduction* is any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

(2) The term *source reduction* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(3) The term *source reduction* does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

* * * * *

Source at a Performance Track member facility means a major or area source located at a facility which has been accepted by EPA for membership in the National Environmental Performance Track program (as described at *http://www.epa.gov/performancetrack*, formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

3. Section 63.17 is added to read as follows:

§ 63.17 Pollution prevention exemption.

Consistent with EPA's commitment to promote and encourage pollution prevention, this section provides a mechanism for a major or area source to cease being subject to a particular subpart of this part if the owner or operator has implemented pollution prevention measures that eliminate all hazardous air pollutant emissions from all sources of emissions subject to regulation under that subpart after the initial compliance date specified in that subpart.

(a) *Applicability of pollution prevention exemption.* The owner or operator of a major or area source subject to a subpart in this part that meets the requirements in paragraphs (a)(1) through (3) of this section may submit a written request to the Administrator that the major or area source no longer be subject to the subpart.

(1) The major or area source was subject to the subpart on the first applicable compliance date specified in the subpart.

(2) The owner or operator has implemented pollution prevention

measures (as defined in § 63.2) such that no hazardous air pollutant is emitted from any source of emissions to which any requirement under the subpart applies.

(3) Each emission limitation under the subpart is greater than zero.

(b) *General requirements for pollution prevention exemption.* (1) Until the owner or operator receives written notification that the Administrator has approved a pollution prevention exemption according to this section, the major or area source is subject to all applicable requirements in the subpart.

(2) Upon receipt by the owner or operator of the written notification of approval from the Administrator, the major or area source is no longer subject to the subpart.

(3) The approved exemption applies only as long as no hazardous air pollutant is emitted from any source of emissions to which any requirement under the subpart applies. The owner or operator must notify the Administrator at least 30 days prior to emitting a hazardous air pollutant. If any hazardous air pollutant is emitted from any such source of emissions, the major or area source is subject to the subpart, and the owner or operator must comply with the subpart as of that date.

(4) If the applicability of the subpart is the only reason that the major or area source is subject to requirements under 40 CFR part 70 or 71 (*i.e.*, the title V operating permits program), after receiving the written notification that the source is no longer subject to the subpart, the owner or operator may apply to the permitting authority to no longer be subject to the title V operating permits program and to have the existing permit rescinded.

(c) *Request for pollution prevention exemption.* (1) The owner or operator may submit a written request to the Administrator at any time after the first applicable compliance date for the major or area source to no longer be subject to the subpart. For a source at a Performance Track member facility, the owner or operator must submit the request to the Administrator and is encouraged to submit it to the designated performance track contact within EPA. (The Administrator will designate a central contact within the EPA to facilitate and expedite the review of a Performance Track member facility's request for a pollution prevention exemption.)

(2) The written request may include any information that the owner or operator considers useful to demonstrate that the subpart should no longer apply. At a minimum, the written request must include the information in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) A statement identifying the subpart and each source of emissions that is currently subject to the subpart, and indicating that the owner or operator is applying for the major or area source to no longer be subject to the subpart.

(ii) A description of the pollution prevention measures used to eliminate the hazardous air pollutant emissions, and a demonstration that the measures qualify as pollution prevention as defined in § 63.2.

(iii) A demonstration that the pollution prevention measures have eliminated all hazardous air pollutant emissions from each source of emissions to which any requirement under the subpart applies.

(iv) Documentation that the subpart does not include a limit of zero hazardous air pollutant emissions for any source of emissions to which any requirement under the subpart applies.

(v) A certification signed by a responsible official that the major or area source will not resume emitting any hazardous air pollutant from any source of emissions to which any requirement under the subpart applies unless the owner or operator notifies the Administrator in writing at least 30 days prior to emitting a hazardous air pollutant.

(vi) A certification signed by a responsible official that the subpart will again apply to the major or area source on the date that the source resumes emitting a hazardous air pollutant, and that the owner or operator will comply with all applicable requirements of the subpart on that date.

(d) *Review and approval or disapproval of request for pollution prevention exemption.* (1) For each request submitted for a pollution prevention exemption in accordance with paragraph (c) of this section, the Administrator will notify the owner or operator in writing of the approval of, or intent to deny approval of, the request within a 45-day notification period after receiving the request. For a source at a Performance Track member facility, the notification period for approval or intent to deny is 30 days after receiving the request.

(2) The major or area source is subject to the subpart until the Administrator notifies the owner or operator in writing of the approval of the request to no longer be subject to the subpart. Failure of the Administrator to notify the owner or operator in writing of the approval of, or intent to deny approval of, the request within the applicable notification period after receiving the request does not constitute approval of the request.

(3) The Administrator may specify additional compliance requirements as a condition of approving the request that the subpart no longer apply.

(4) If the Administrator intends to disapprove the request that the subpart no longer apply, the Administrator will notify the owner or operator in writing of the intent to deny approval within the applicable notification period after receiving the request. The written notification will include the information in paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(i) Notice of the information and findings on which the intended disapproval is based.

(ii) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request.

(iii) A deadline for presenting the additional information to the Administrator.

(5) If additional information is submitted according to paragraph (d)(4)(ii) of this section, the Administrator will notify the owner or operator in writing of the approval or disapproval of the request within the applicable notification period after receiving any additional information. If additional information has not been submitted by the deadline established according to paragraph (d)(4)(iii) of this section, the Administrator will disapprove the request. Failure of the Administrator to notify the owner or operator in writing of the approval or disapproval within the applicable notification period after receiving the additional information does not constitute approval of the request.

(6) If the Administrator approves the request that the subpart no longer apply, the Administrator will transmit written approval to the owner or operator that includes the elements in paragraphs (d)(6)(i) through (d)(6)(v) of this section. The written approval document shall be enforceable under the CAA.

(i) Identification of the subpart of this part that no longer applies.

(ii) Identification of each specific source of emissions to which the approval would apply, *i.e.*, the source(s) of emissions to which the subpart would no longer apply.

(iii) Any additional compliance measures deemed necessary by the Administrator.

(iv) A requirement that the owner or operator provide written notice to the Administrator at least 30 days prior to emitting a hazardous air pollutant from the source of emissions to which the approval applies.

(v) A condition that the subpart will again apply on the date that the major or area source begins to emit a hazardous air pollutant from the source of emissions to which the approval applies, and that the owner or operator of a major or area source must comply with the subpart on that date.

4. Section 63.18 is added to read as follows:

§ 63.18 Pollution prevention alternative requirements.

Consistent with EPA's commitment to promote and encourage pollution prevention, this section provides a mechanism for a major or area source to replace particular requirements of a subpart of this part with pollution prevention alternative requirements if the owner or operator has implemented pollution prevention measures that reduce hazardous air pollutant emissions to at least the level required by the emission limitation(s) in that subpart after the initial compliance date specified in that subpart.

(a) *Applicability of pollution prevention alternative requirements.* The owner or operator of an affected source subject to emission limitation(s) in a subpart of this part may submit a written request to the Administrator for approval of pollution prevention alternative requirements, including (as desired) alternative compliance demonstration procedures, monitoring, recordkeeping, and reporting. This mechanism may not be used to request alternative test methods or emission limits. The owner or operator of an affected source that is currently exempt from a subpart of this part pursuant to § 63.17 may also apply for alternative requirements. The request for approval of pollution prevention alternative requirements may be for a portion of an affected source (for example, where the emission limitation applies to a source of emissions within the affected source rather than to the entire affected source), for an affected source, or for multiple affected sources (for example, where the subpart includes several affected sources with different emission limitations for each affected source). To apply for pollution prevention alternative requirements, the owner or operator of an affected source must meet the requirements in paragraphs (a)(1) and (2) of this section for each affected source.

(1) The affected source was subject to the subpart on the first applicable compliance date specified in the subpart.

(2) The owner or operator has implemented pollution prevention measures (as defined in § 63.2) to reduce hazardous air pollutant emissions to at least the level that is required by the applicable emission limitation(s), and maintained hazardous air pollutant emissions at that level. If the owner or operator is applying for pollution prevention alternative requirements for an affected source subject to an emission limitation, the hazardous air pollutant emissions must be reduced at least to the level required by the emission limitation that applies to that affected source.

(b) *General requirements for pollution prevention alternative requirements.* (1) Until the owner or operator receives written notification that the Administrator has approved pollution prevention alternative requirements according to this section, the affected source is subject to all applicable requirements in the subpart. For an affected source that is currently exempt from a subpart pursuant to § 63.17, the affected source is subject to all requirements contained in the written approval document for the exemption until the owner or operator receives written notification that the Administrator has approved pollution prevention alternative requirements.

(2) Upon receipt by the owner or operator of the written notification of approval from the Administrator, the approved pollution prevention alternative requirements become the applicable requirements for the source of emissions. Accordingly, the source of emissions is no longer subject to the compliance requirements in the subpart that the alternative requirements specifically replace.

(3) The approved pollution prevention alternative requirements apply only as long as the owner or operator continues to use the approved pollution prevention measures and to reduce hazardous air pollutant emissions to at least the level specified in the approved request. The owner or operator must notify the Administrator at least 30 days prior to discontinuing the approved pollution prevention measures or failing to maintain the hazardous air pollutant reductions. If the owner or operator discontinues the approved pollution prevention measures and/or fails to maintain the hazardous air pollutant reductions specified in the approved request, all applicable requirements of the subpart again apply, and the owner or operator must comply with the applicable requirements as of that date.

(4) At all times after the first applicable compliance date identified in the subpart, the affected source must comply with each applicable requirement in the subpart, unless the Administrator has provided written notification according to paragraph (d)(4) of this section that an applicable requirement under the subpart does not apply.

(c) *Request for pollution prevention alternative requirements.* (1) The owner or operator may submit a written request to the Administrator at any time after the first applicable compliance date for use of pollution prevention alternative requirements. For a source at a Performance Track member facility, the owner or operator must submit the request to the Administrator and is encouraged to submit it to the designated performance track contact within EPA. (The Administrator will designate a central contact within the EPA to facilitate and expedite the review of a Performance Track member facility's request for pollution prevention alternative requirements.)

(2) The written request may include any information that the owner or operator considers useful to demonstrate that pollution prevention alternative requirements are justified. At a minimum, the written request must include the information in paragraphs (c)(2)(i) through (c)(2)(ix) of this section.

(i) A statement identifying the subpart and each source of emissions that is currently subject to the subpart, and indicating that the owner or operator is applying for the use of pollution prevention alternative requirements. (Indicate if the affected source is currently exempt from the subpart pursuant to § 63.17.)

(ii) A description of each source of emissions for which pollution prevention alternative requirements are requested.

(iii) A description of the pollution prevention measures used to reduce hazardous air pollutant emissions from each source of emissions, and a demonstration that the measures qualify as pollution prevention as defined in § 63.2.

(iv) A demonstration that the pollution prevention measures have reduced hazardous air pollutant emissions from each identified source of emissions at least to the level that is required by the applicable emission limitation.

(v) Proposed specific pollution prevention alternative requirements, including (as needed) procedures for demonstrating continuous compliance, monitoring (which may include tracking of material purchases and composition), recordkeeping, and reporting to assure compliance with the commitment to continue using the pollution prevention measures and to maintain the described hazardous air pollutant reductions.

(vi) A citation of each applicable requirement in the subpart that the owner or operator proposes to replace with the proposed pollution prevention alternative requirements, accompanied by an explanation of how the proposed alternative requirements satisfy the intent of the replaced requirements and/or why the replaced requirements are not necessary.

(vii) A certification signed by a responsible official that each source of emissions will not discontinue the pollution prevention measures or fail to maintain the hazardous air pollutant reductions described in the request unless the owner or operator notifies the Administrator in writing at least 30 days prior to discontinuing the pollution prevention measures or failing to maintain the hazardous air pollutant reductions.

(viii) A certification signed by a responsible official that the requirements in the subpart will again apply to each source of emissions on the date that the owner or operator discontinues the pollution prevention measures and/or fails to maintain the hazardous air pollutant reductions, and that the owner or operator will comply with all applicable requirements of the subpart on that date.

(ix) A certification signed by a responsible official that the affected source is subject to and in compliance with all applicable requirements in the subpart not specifically identified in paragraph (c)(2)(vi) of this section (*i.e.*, not proposed to be replaced by alternative compliance requirements).

(d) *Review and approval or disapproval of request for pollution prevention alternative requirements.* (1) For each request submitted according to paragraph (c) of this section, the Administrator will notify the owner or operator of the affected source in writing of the approval or intent to deny approval within a 45-day period after receiving the request. For a source at a Performance Track member facility, the notification period for approval or intent to deny is 30 days after receiving the request.

(2) The affected source is subject to all of the requirements in the subpart until the Administrator notifies the owner or operator in writing of the approval of the request to use pollution prevention alternative requirements. Failure of the Administrator to notify the owner or operator in writing of the approval or intent to deny approval of the request within the applicable notification period after receiving the request does not constitute approval of the request.

(3) The Administrator may specify additional compliance requirements as a condition of approving the pollution prevention alternative requirements.

(4) If the Administrator intends to disapprove the request for pollution prevention alternative requirements, the written notification will include the information in paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(i) Notice of the information and findings on which the intended disapproval is based.

(ii) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request.

(iii) A deadline for presenting the additional information to the Administrator.

(5) If additional information is submitted according to paragraph (d)(4)(ii) of this section, the Administrator will notify the owner or operator in writing of the approval or disapproval of the request within the applicable notification period after receiving any additional information. If additional information has not been submitted by the deadline established according to paragraph (d)(4)(iii) of this section, the Administrator will disapprove the request. Failure of the Administrator to notify the owner or operator in writing of the approval or disapproval within the applicable notification period after receiving the additional information does not constitute approval of the request.

(6) If the Administrator approves the request for pollution prevention alternative requirements, the Administrator will transmit written approval to the owner or operator that includes the elements listed in paragraphs (d)(6)(i) through (d)(6)(v) of this section. The written approval document shall be enforceable under the CAA.

(i) Identification of each specific source of emissions covered by the approval.

(ii) The pollution prevention alternative requirements that apply to each designated source of emissions, including any additional compliance measures deemed necessary by the Administrator.

(iii) The applicable requirements of the subpart that no longer apply to each designated source of emissions.

(iv) A requirement that the owner or operator provide written notice to the Administrator at least 30 days prior to discontinuing the pollution prevention measures and/or failing to maintain the HAP reductions described in the request.

(v) A condition that the applicable requirements of the subpart will again apply to each designated source of emissions on the date that the owner or operator discontinues the pollution prevention measures and/or fails to maintain the hazardous air pollutant reductions described in the request for that source of emissions, and that the owner or operator must comply with all applicable requirements of the subpart on that date.

(e) *Review and approval or disapproval of request for modification to approved pollution prevention alternative requirements.* (1) If a request for pollution prevention alternative requirements has been approved according to paragraph (d) of this section, the owner or operator may submit a request to modify the pollution prevention alternative requirements.

(2) The request must include, at a minimum, the information specified in paragraphs (c)(2)(i) through (c)(2)(ix) of this section.

(3) The Administrator will approve or disapprove the request according to the procedures in paragraphs (d)(1) through (d)(6) of this section.

(4) Each source of emissions is subject to the previously-approved pollution prevention alternative requirements until the Administrator notifies the owner or operator in writing of the approval of the modified pollution prevention alternative requirements.

[FR Doc. 03–12180 Filed 5–14–03; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 208, 219, and 252

[DFARS Case 2002–D003]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2002 and Section 819 of the National Defense Authorization Act for Fiscal Year 2003. Sections 811 and 819 address requirements for conducting market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog, and for use of competitive procedures if an FPI product is found to be noncomparable to products available from the private sector. Section 819 also addresses