ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–AR–2006–0897; FRL–8330–1]

RIN 2060–AN44

National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing six national emissions standards for hazardous air pollutants for seven area source categories. The final emissions standards and associated requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one subpart. These final rules include emission standards that reflect the generally available control technologies or management practices in each of these area source categories.

DATES: These final rules are effective on July 16, 2007. The incorporation by reference of certain publications listed in these rules is approved by the Director of the Federal Register as of July 16, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0897. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825; fax number: (919) 541–3207; e-mail address: nizich.sharon@epa.gov.

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

I. General Information

A. Does this action apply to me?

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

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Acrylic and modacrylic fibers production.	325222	Area source facilities that manufacture polymeric organic fibers using acrylonitrile as a primary monomer.
Carbon black production.	325182	Area source facilities that manufacture carbon black using the furnace, thermal, or acetylene decomposition process.
Chemical manufacturing: chromium compounds.	325188	Area source facilities that produce chromium compounds, principally sodium dichromate, chromic acid, and chromic oxide, from chromite ore.
Flexible polyurethane foam production.	326150	Area source facilities that manufacture foam made from a polyurethane polymer.

Category	NAICS code [1]	Examples of regulated entities
Flexible polyurethane foam fabrication operations.	326150	Area source facilities that cut or bond flexible polyurethane foam pieces together or to other substrates.
Lead acid battery manufacturing.	335911	Area source facilities that manufacture lead acid storage batteries made from lead alloy ingots and lead oxide.
Wood preserving	321114	Area source facilities that treat wood such as lumber, ties, poles, posts, or pilings with a preservative.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11393 of subpart LLLLLL (NESHAP for Acrylic and Modacrylic Fibers Production Area Sources), 40 CFR 63.11400 of subpart MMMMMM (NESHAP for Carbon Black Production Area Sources), 40 CFR 63.11407 of subpart NNNNNN (NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds), 40 CFR 63.11414 of subpart OOOOOO (NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources), 40 CFR 63.11421 of subpart PPPPPP (NESHAP for Lead Acid Battery Manufacturing Area Sources), or 40 CFR 63.11428 of subpart QQQQQQ (NESHAP for Wood Preserving Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

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

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 14, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 hazardous air pollutants (HAP), which, as the result of emissions of area sources,[1] pose the greatest threat to public health in urban areas. Consistent with this provision, in 1999, in the Integrated Urban Air Toxics Strategy, EPA identified the 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''Urban HAP.'' See 64 FR 38715, July 19, 1999. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation. EPA listed the source categories that account for 90 percent of the Urban HAP emissions in the Integrated Urban Air Toxics Strategy.[2] Sierra Club sued EPA, alleging a failure to complete standards for the area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the time frame specified by the statute. See *Sierra Club* v. *Johnston*, No. 01–1537 (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA section 112(c)(3).

Among other things, the order requires that, by June 15, 2007, EPA complete standards for six area source categories. On April 4, 2007, we proposed NESHAP for the following seven listed area source categories that we have selected to meet the June 15, 2007 deadline: (1) Acrylic and Modacrylic Fibers Production; (2) Carbon Black Production; (3) Chemical Manufacturing: Chromium Compounds; (4) Flexible Polyurethane Foam Production; (5) Flexible Polyurethane Foam Fabrication Operations; (6) Lead Acid Battery Manufacturing; and (7) Wood Preserving. See 72 FR 16632. These final NESHAP complete the required regulatory action for seven area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' As explained in the proposed NESHAP, we are setting standards for these seven area source categories pursuant to section 112(d)(5). See 72 FR 16638, April 7, 2007.

III. Summary of Final Rules and Changes Since Proposal

This section summarizes the final rules and identifies and discusses changes since proposal. For changes that were made as a result of public comments, we have provided detailed explanations of the changes and the rationale in the responses to comments in section V of this preamble.

A. NESHAP for Acrylic and Modacrylic Fibers Production Area Sources

1. Applicability and Compliance Dates

This final rule applies to any existing or new acrylic or modacrylic fibers production plant that is an area source of HAP. The owner or operator of an existing area source must comply with all the requirements of this area source

[1] An area source is a stationary source of hazardous air pollutant (HAP) emissions that is not a major source. A major source is a stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

[2] Since its publication in the Integrated Urban Air Toxics Strategy in 1999, EPA has revised the area source category list several times.

NESHAP by January 16, 2008. The owner or operator of a new area source must comply with this area source NESHAP by July 16, 2007 or upon initial startup, whichever is later.

2. Emissions Standards

The Acrylic and Modacrylic Fibers Production area source category was listed pursuant to section 112(c)(3) for its contribution of the Urban HAP acrylonitrile (AN). In response to comments, we have revised the proposed AN requirements for existing area sources to include a new compliance alternative. We have also revised the compliance provisions for existing area sources to allow facilities to change the operating limits for a wet scrubber control device.

Existing area sources. The final standards for existing area sources apply to emissions from the control devices for polymerization and monomer recovery process equipment, spinning lines at plants that do not have a monomer recovery process, and AN storage tanks. As proposed, we are adopting the State permit requirements applicable to the one existing area source as the NESHAP for existing acrylic and modacrylic fibers production area sources.

No changes have been made since proposal to the AN emissions limits for control devices for polymerization and monomer recovery process equipment. The AN emissions limit for the control device for polymerization process equipment is 0.2 pound per hour (lb/hr). The AN emissions limit for the control device for monomer recovery process equipment is 0.05 lb/hr.

In response to comments, we have revised the proposed rule to include an alternative compliance option for existing area sources. The new compliance option in § 63.11395(b)(3) allows an existing area source to comply with the same requirements that apply to process vents for new area sources. Although the two requirements are expressed in different units, they provide an equivalent level of control.

No changes have been made since proposal to the control device parameter operating limits for wet scrubbers. The daily average water flow rate to the wet scrubber control device for polymerization process equipment must not drop below 50 liters per minute (l/min). For the wet scrubber control device for monomer recovery process equipment, the daily average water flow rate must not drop below 30 l/min. We have revised the proposed standard to include procedures for changing the operating limits based on the results of a performance test. These procedures are contained in § 63.11395(k).

As explained in the proposed rule, this rule does not include requirements for spinning lines for existing sources that remove residual AN using a monomer recovery process prior to spinning. As proposed, existing sources that do not have a monomer recovery process prior to spinning must meet the requirements for spinning lines in 40 CFR part 63, subpart YY.

Acrylonitrile storage tanks meeting certain capacity/vapor pressure conditions must comply with one of three control options: (1) A fixed roof in combination with an internal floating roof, (2) an external floating roof, or (3) a closed vent system and control device.

In response to comments, we are clarifying in the final rule that process and maintenance wastewater containing AN must be treated in a wastewater treatment system. We are deleting the definition of ''wastewater'' because we have specifically defined ''process wastewater'' and ''maintenance wastewater.''

New area sources. No changes have been made to the proposed emissions standards for new area sources. The final standards apply to process vents, fiber spinning lines, AN storage tanks, process wastewater, maintenance wastewater, and equipment leaks. The process vent requirements apply to each vent stream with an AN concentration of 50 parts per million by volume (ppmv) or greater and a flow rate of 0.005 cubic meters per minute or greater. The owner or operator must control AN emissions from process vents meeting this threshold by reducing uncontrolled emissions by 98 weight percent or meeting an emissions limit of 20 ppmv by venting vapors through a closed vent system to a recovery device, control device, or flare. The owner or operator must determine which process vents meet the threshold noted above by using the procedures and methods in § 63.1104 of subpart YY.

The emissions limits for fiber spinning lines require the owner or operator to: (1) Reduce AN emissions by 85 weight-percent (e.g., by venting emissions from a total enclosure through a closed vent system to a control device that meets the requirements in 40 CFR part 63, subpart SS), (2) reduce AN emissions from the spinning line to 0.5 pounds of AN per ton (lb/ton) of acrylic and modacrylic fiber produced, or (3) reduce the AN concentration of the spin dope to less than 100 parts per million by weight (ppmw). The requirements in § 63.1103(b)(4) of subpart YY apply to an enclosure for a fiber spinning line.

For all AN storage vessels at a new area source, the owner or operator must: (1) Reduce AN emissions by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices as specified in § 63.982(a)(1) of subpart SS or reduce AN emissions by 95 weight-percent or greater by venting emissions through a closed system to a recovery device as specified in § 63.993 of subpart SS; or (2) comply with the equipment standards for internal or external floating roofs in 40 CFR part 63, subpart WW.

Process wastewater and maintenance wastewater at new sources are subject to the requirements in § 63.1106(a) and (b) of subpart YY. We are clarifying that wastewater that contains AN but which is below the thresholds for control in subpart YY must be treated in a wastewater treatment system. The owner or operator is also required to comply with the equipment leak requirements in subpart YY. Subpart YY applies the requirements in either subpart TT or UU to equipment that contains or contacts 10 percent by weight or greater of AN and that operates at least 300 hours per year.

3. Compliance Requirements

No significant changes have been made to the compliance provisions for existing sources. As proposed, we are including in this final NESHAP the monitoring, testing, recordkeeping, and reporting requirements in the State operating permit for the one existing area source. The only change since proposal is the addition of records of process and maintenance wastewater streams that are treated in a wastewater treatment system. Specifically, for existing sources, continuous parameter monitoring systems (CPMS) are required to measure and record the scrubber water flow rates at least every 15 minutes. The owner or operator of an existing source must determine compliance with the daily average operating limits for the scrubber water flow rates on a monthly basis and submit quarterly compliance reports to EPA or the delegated authority. Compliance with the operating limits is to be determined on a monthly basis; quarterly compliance reports also are required. The owner or operator must keep records of each monthly compliance determination and retain the records for at least 2 years following the date of each compliance determination. If the daily average water flow rate falls below the required operating limit, the owner or operator must submit a report to EPA or the delegated authority that identifies the

exceedance; the owner or operator would be required to submit the report within 10 days of the exceedance.

The owner or operator of an existing source must conduct a performance test for each control device for polymerization process equipment and monomer recovery process equipment. A performance test is not required for an existing source if a prior performance test has been conducted using the methods required by this rule, which are the requirements contained in § 63.1104 of subpart YY, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

For AN storage tanks at existing sources, the owner or operator must comply with the applicable testing, inspection, and notification procedures in 40 CFR 60.113b(a) and the recordkeeping and reporting requirements in 40 CFR 60.115b and 60.116b of subpart Kb. The testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 65, subpart C apply if the owner or operator elected to comply with the part 65 control option for AN storage tanks. See 40 CFR 60.110b(e).

The owner or operator of an existing area source must comply with certain notification requirements in § 63.9 of the General Provisions (40 CFR part 63, subpart A). These requirements include a notification of applicability and a notification of compliance status. In the notification of compliance status required in 40 CFR 63.9(h), the owner or operator of an existing source may certify initial compliance with the emissions limits based on a previous performance test if applicable. We have revised the proposed certification of compliance for the emissions limit to include a certification for the new alternative compliance option for process vents. The owner or operator must also certify initial compliance with the NSPS requirements in 40 CFR part 60, subpart Kb.

We are also requiring that the owner or operator of an existing source comply with the requirements for startup, shutdown, and malfunction (SSM) plans, reports, and records in 40 CFR 63.6(e)(3). As proposed, we are allowing additional time (6 months after promulgation) to allow for preparation of the plan.

No changes have been made since proposal to the compliance provisions for new area sources. The owner or operator of a new area source must perform assessments [3] to identify affected process vents, equipment, and wastewater streams; conduct initial performance tests and/or compliance demonstrations; and comply with the monitoring, inspection, recordkeeping, and reporting requirements in each applicable subpart. For process vents, the owner or operator must comply with all testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 63, subpart SS. For other emissions sources, the owner or operator must comply with all testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 63, subpart SS or WW for AN tanks, and subpart TT or UU for equipment leaks. Only specified provisions in subpart G apply for process wastewater and maintenance wastewater.

The owner or operator of a new area source is also required to comply with the NESHAP General Provisions (40 CFR part 63, subpart A), including requirements for notifications; performance tests and reports; SSM plans and reports; recordkeeping, and reporting. We have identified in the final NESHAP the General Provisions of 40 CFR part 63 applicable to existing and new sources.

B. NESHAP for Carbon Black Production Area Sources

1. Applicability and Compliance Dates

The final NESHAP applies to each new or existing carbon black production facility that is an area source of HAP. The owner or operator of an existing affected source must comply with all the requirements of this area source NESHAP by July 16, 2007. The owner or operator of a new affected source must comply by July 16, 2007 or upon initial startup, whichever is later.

2. Emissions Standards

The Carbon Black Production area source category was listed pursuant to section 112(c)(3) for regulation for its contribution of the Urban HAP POM (polycyclic organic matter). We have made no changes since proposal to the emissions standards for this source category.

This final NESHAP requires the owner or operator of an existing or new source to control HAP emissions from each carbon black production main unit filter process vent that has a HAP concentration equal to or greater than 260 ppmv. The specific control requirements are: (1) Reduce emissions of HAP by using a flare meeting all the requirements of 40 CFR part 63, subpart SS; or (2) reduce total HAP emissions by 98 weight-percent or to a concentration of 20 ppmv, whichever is less, by venting emissions through a closed vent system to any combination of control devices meeting the requirements 40 CFR 63.982(a)(2).

3. Compliance Requirements

We have made no changes to the proposed compliance provisions for carbon black production area sources. For existing and new area sources, we are adopting in this final NESHAP the testing, monitoring, recordkeeping, and reporting requirements in subpart YY. The owner or operator must demonstrate compliance with the emissions limit for existing and new area sources by monitoring the operating parameters of the control device or devices selected to comply with the requirements of the NESHAP.

The owner or operator of an existing or new area source must comply with the subpart YY notification requirements in 40 CFR 63.1110. In the notification of compliance status required in 40 CFR 63.1110(d), the owner or operator of an existing source may demonstrate initial compliance with the emissions standards based on the results of a performance test that has been previously conducted provided certain conditions are met (*e.g.*, using the same methods as the test methods in the final rule).

As proposed, we are requiring that the owner or operator of an existing area source comply with the SSM requirements in 40 CFR 63.1111. Section 63.1111(a)(1) of subpart YY requires that the source include provisions for an SSM plan.

C. NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds

1. Applicability and Compliance Dates

The final rule applies to the owner or operator of a new or existing area source that manufactures chromium compounds. The owner or operator of an existing area source must comply with all the requirements of this area source NESHAP by January 16, 2008. The owner or operator of a new affected source must comply by July 16, 2007 or upon initial startup, whichever is later. In response to comments, we have also added a definition of ''chromium compounds manufacturing facility.''

2. Emissions Standards

The Chemical Manufacturing: Chromium Compounds area source category was listed for regulation pursuant to section 112(c)(3) for its

[3] These assessments are used to determine which process vents and wastewater streams must be controlled.

contribution of the Urban HAP chromium. We have not revised the emissions standards for this area source category since proposal. However, we have revised Table 1 of subpart NNNNNN to clarify the regulated process equipment. These changes include revising the title of Table 1 to refer to emissions sources instead of emissions points, changing the ''filter for sodium chromate slurry'' to ''residue dryer system'', changing the ''reactor used to produce chromic acid'' to the ''melter used to produce chromic acid'', and removing the ''sodium evaporation unit'' from the table. These changes do not affect the estimated level of emissions control or reduction for the rule.

The final NESHAP requires new and existing facilities to operate a capture system that collects gases and fumes from each emissions source and conveys the gases to a PM control device that controls emissions to the levels required in the rule. Emissions limits for PM, in lb/hr format, are established based on the process rate of the emissions source. The PM emissions limits apply to more than 20 emissions sources in the production of chromium compounds, including sodium chromate, sodium dichromate, chromic acid, chromic oxide, and chromium dehydrate at new and existing sources.

3. Compliance Requirements for Existing Area Sources

As proposed, the compliance requirements for existing area sources are based on the operation and maintenance, recordkeeping, and reporting requirements in the title V permit of the area source located in North Carolina. The title V permit includes requirements for inspections and maintenance of each type of control device, semiannual reports of any deviation, and records of control device inspections and maintenance. The control devices used by the existing area sources in this source category include baghouses, dry electrostatic precipitators, wet electrostatic precipitators, and wet scrubbers. The monitoring requirements for existing area sources consist of inspection and maintenance requirements specific to the type of control device.

In response to comments, we have revised the proposed requirements for initial and periodic inspections of control devices in several respects. The final rule requires an initial inspection for each installed control device which has operated within 60 days of the compliance date. An initial inspection for an installed control device which has not operated within 60 days of the compliance date must be conducted prior to startup. In addition, we have revised the requirements for initial inspections of the internal components of control devices to state that an initial inspection is not required if an inspection has been performed within the past 24 months (for an electrostatic precipitator) or within the past 12 months (for a baghouse or wet scrubber). The proposed requirements for initial inspections that do not require shutting down the process and control device, such as inspecting baghouses and ductwork for leaks and verifying proper operation of electrostatic precipitators and wet scrubbers, have not been revised. We have also clarified the timing for periodic inspections by requiring subsequent inspections 12 or 24 months after the last inspections and then annual or biennial inspections thereafter. We have also revised the final rule to clarify that the requirements for internal inspections of control devices do not apply to cyclonic scrubbers installed upstream of electrostatic precipitators.

For a baghouse, this final NESHAP requires monthly visual inspections of the system ductwork and baghouse units for leaks. The plant owner or operator must conduct an annual inspection of the interior of each baghouse for structural integrity and condition of the filter fabric. For electrostatic precipitators, plants are required to conduct: (1) A daily check to verify that the electronic controls for corona power and rapper operation are functioning, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold; (2) a monthly visual inspection of the system ductwork, cyclones (if applicable), housing unit, and hopper for leaks; and (3) a biennial internal inspection to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates. For wet electrostatic precipitators, plants also must conduct a daily check to verify water flow and a biennial internal inspection to determine the condition and integrity of plate wash spray heads. For wet scrubbers, plants are required to conduct: (1) A daily check to verify water flow to the scrubber; (2) a monthly visual inspection of the system ductwork and scrubber unit for leaks; and (3) an annual internal inspection for structural integrity and condition of the demister and spray nozzle.

The owner or operator of an existing plant must record the results of each inspection, the results of any maintenance performed on the control device, and the date and time of each recorded action. The results of inspections and maintenance of control equipment must be recorded in a logbook (written or electronic). The logbook must be kept onsite and made available to the permitting authority upon request. The owner or operator of an existing plant is required to report any deviations from the emissions limits or monitoring requirements in a semiannual report submitted to the permitting authority.

The owner or operator of an existing area source must submit an initial notification of applicability and a notification of compliance status according to the requirements in 40 CFR 63.9 of the General Provisions (40 CFR part 63, subpart A). In the notification of compliance status required by 40 CFR 63.9(h), the owner or operator must certify that equipment has been installed and is operating for each regulated emissions point and that the plant will comply with the inspection and maintenance requirements. A performance test is not required if a performance test has been conducted within the past 5 years using the specified test methods, and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. The final rule also requires that the owner or operator comply with either the requirements for SSM plans and reports in 40 CFR 63.6(e)(3) or with the requirements in this final rule. The owner or operator is required to submit a report if an event occurs that results in emissions in excess of a PM limit and lasts for more than 4 hours.

4. Compliance Requirements for New Area Sources

No changes have been made to the compliance requirements for new area sources. The owner or operator of a new source must install and operate a bag leak detection system for each baghouse used to comply with a PM emissions limit. For additional information on bag leak detection systems that operate on the triboelectric effect, see ''Fabric Filter Bag Leak Detection Guidance'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, NTIS publication number PB98164676. This document is available from the National Technical Information Service (NTIS), 5385 Port Royal Road, Springfield, VA 22161.

The owner or operator of a new source that uses a control device other than a baghouse must submit a

monitoring plan to the permitting authority for approval. The plan must describe the control device, the parameters to be monitored, and the operating limits for the parameters established during a performance test.

The owner or operator of a new source is required to demonstrate initial compliance with each applicable PM emissions limit by conducting a performance test according to the requirements in 40 CFR 63.7. EPA Method 5 or 5D (40 CFR part 60, appendix A), as applicable, is to be used to determine the PM emissions. All of the testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements of the part 63 General Provisions apply to a new area source. We have identified in the final NESHAP the General Provisions of 40 CFR part 63 applicable to existing and new sources.

D. NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources

1. Applicability and Compliance Dates

This final NESHAP applies to both new and existing flexible foam production and flexible foam fabrication plants that are area sources. In response to comments, we have revised the compliance dates to allow more time for certain existing area sources to comply with the NESHAP. The owner or operator of an existing slabstock flexible polyurethane foam production-affected source must comply with all of the requirements of this area source NESHAP by July 16, 2008 instead of July 16, 2007. As proposed, the owner or operator of an existing molded flexible polyurethane foam production, an existing rebond foam production, or an existing flexible polyurethane foam fabrication affected source must comply by July 16, 2007. The owner or operator of a new area source must comply by July 16, 2007 or at startup, whichever is later.

2. Emissions Standards and Management Practices

The Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories were listed pursuant to section 112(c)(3) for their contribution of the Urban HAP methylene chloride. No changes have been made since proposal to the required emissions standards and management practices. Table 1 of this preamble summarizes the various types of foam production and fabrication area sources covered by this final rule and the corresponding regulatory strategies. As shown in the table below, slabstock foam producers may still use limited amounts of methylene chloride as an auxiliary blowing agent (ABA). The technologies determined to be GACT for slabstock foam production area sources significantly reduce, but do not always eliminate the use of methylene chloride as an ABA. Methylene chloride use is prohibited for other uses at foam production and foam fabrication facilities.

TABLE 1.—FOAM PRODUCTION AND FABRICATION PROCESSES AND CORRESPONDING REGULATIONS

Area source types	Final regulation
1. Slabstock polyurethane foam production	a. Emission limits for methylene chloride used as an auxiliary blowing agent (ABA); b. Controls on storage vessels; c. Management practices for equipment leaks; and d. Prohibition on use of methylene chloride as an equipment cleaner; or Eliminate use of methylene chloride in slabstock foam production processes.
2. Molded polyurethane foam production	Prohibit use of methylene chloride as mold release agent or equipment cleaner.
3. Rebond foam production	Prohibit use of methylene chloride as mold release agent.
4. Foam fabrication adhesive use	Prohibit use of methylene chloride adhesives.

For slabstock foam production area sources, we are requiring emissions limits and management practices to reduce methylene chloride emissions from the production line, storage tanks, leaking equipment, and equipment cleaning. Emissions limits for methylene chloride used as an ABA are based on a formula which varies depending on the grades of foam being produced. Vapor balance systems or carbon beds are required for methylene chloride storage vessels. The management practices require plants to identify and correct leaking pumps and other equipment in methylene chloride service. Specifically, owners or operators must check periodically for equipment leaks (from quarterly for pumps and valves to annual for connectors) using EPA Method 21 (40 CFR part 60, appendix A). Leaks, which are defined as a reading of 10,000 parts per million (ppm) or greater, must be corrected within 15 days of when they are detected. The use of methylene chloride to clean mix heads and other equipment is prohibited.

Slabstock foam facilities that do not use any methylene chloride at the facility are not subject to these emissions limitations and management practices. Such facilities are, however, required to submit a one-time report.

This final rule prohibits the use of methylene chloride-based mold release agents at molded and rebond foam facilities, methylene chloride-based equipment cleaners at molded foam facilities, and methylene chloride-based adhesives for foam fabrication.

3. Compliance Requirements

No changes have been made since proposal to the compliance requirements. Slabstock foam area sources continuing to use methylene chloride are required to monitor methylene chloride added at slabstock production mixheads and the methylene chloride contained in and added to methylene chloride storage tanks. Plants using carbon adsorber systems to control emissions from methylene chloride storage tanks must monitor the methylene chloride content of exhaust streams from outlet vents. Plants using a recovery device to reduce methylene chloride emissions are required to comply with a recovered methylene chloride monitoring and recordkeeping program.

The owner or operator of a slabstock foam production area source that continues to use methylene chloride as an ABA must submit semiannual reports containing information on allowable and actual methylene chloride emissions, carbon adsorbers on storage tanks, and equipment leaks. Owners and operators are also required to submit annual compliance

certifications. Records are required to demonstrate compliance, including a daily operating log of foam runs containing the grades of foam produced and related data, and records related to storage tanks and equipment leaks. Slabstock foam plants that do not use any methylene chloride must submit a one-time certification as part of their notification of compliance status.

Molded foam, rebond foam, and foam fabrication area source facilities which operate loop slitters must prepare, and keep on file, compliance certifications which certify that the facility is not using the prohibited methylene-chloride based products. The area source plants must also maintain records documenting that the products they are using do not contain any methylene chloride. These can be records that would be kept in the absence of this final rule such as adhesive usage information and Material Safety Data Sheets. Foam fabrication area source plants which do not operate loop slitters have no compliance certification or recordkeeping requirements.

The owner or operator of each slabstock foam affected source that continues to use methylene chloride and, therefore, is subject to the methylene chloride emissions limits, is required to comply with several requirements of the General Provisions in 40 CFR part 63, subpart A. We have identified in the final NESHAP the General Provisions that apply to existing and new sources.

For slabstock foam production facilities that have eliminated the use of methylene chloride and are not subject to the emissions limitations in this final rule, we are requiring that owners or operators submit a notification certifying that they do not use any methylene chloride. Slabstock foam facilities that choose to use methylene chloride in the future will be subject to the emission limits and other requirements discussed above.

E. NESHAP for Lead Acid Battery Manufacturing Area Sources

1. Applicability and Compliance Dates

This final NESHAP applies to new and existing lead acid battery manufacturing plants that are area sources. The owner or operator of an existing source must comply with all the requirements of this area source NESHAP by July 16, 2008. The owner or operator of a new source must comply with this area source NESHAP by July 16, 2007 or at startup, whichever is later.

2. Emissions Standards and Management Practices

The Lead Acid Battery Manufacturing area source category was listed for regulation pursuant to section 112(c)(3) for its contribution of the Urban HAP lead and cadmium. As proposed, we are adopting as the NESHAP for the Lead Acid Battery Manufacturing area source category the numerical emissions limits for grid casting, paste mixing, three-process operations, lead oxide manufacturing, lead reclamation, and other lead emitting processes in 40 CFR 60.372 of the new source performance standards (NSPS) for lead acid batteries. These lead discharge limits are:

- 0.40 milligram of lead per dry standard cubic meter of exhaust (mg/m^3) from grid casting facilities,
- 1.00 mg/m^3 from paste mixing facilities,
- 1.00 mg/m^3 from three-process operation facilities,
- 5.0 mg per kilogram of lead feed from lead oxide manufacturing facilities,
- 4.50 mg/m^3 from lead reclamation facilities, and
- 1.0 mg/m^3 from any other lead-emitting operations.

We are also adopting the opacity limits from the lead acid battery NSPS. The opacity of emissions must be no greater than 5 percent from lead reclamation facilities and no greater than 0 percent from any affected facility except lead reclamation facilities.

3. Compliance Requirements

At proposal, we stated that we would adopt in this NESHAP the compliance requirements in the NSPS for lead acid batteries. We incorrectly stated in the proposal that title V would not add monitoring to the proposed NESHAP. While that statement was accurate for emissions units controlled by scrubbing systems, it was not accurate for emissions units controlled by fabric filters. We recognized our error during our consideration of comments submitted on the proposal. We have incorporated the part 63 monitoring, recordkeeping, and reporting requirements for all emissions units instead of those in part 60. We concluded that the part 63 General Provisions are more appropriate for this NESHAP than are the part 60 General Provisions that were proposed. We have also added periodic monitoring, recordkeeping, and reporting requirements for emissions units controlled by fabric filters.

We are adopting in this NESHAP the testing and monitoring and requirements in the NSPS for lead acid batteries. These provisions include the requirement to conduct a performance test and opacity measurement for each source. They also require continuous monitoring of the pressure drop for sources controlled by scrubbing systems. In addition to these requirements, we added to the final rule daily recordkeeping and semiannual reporting requirements for emissions units that are controlled by scrubbing systems.

We added to the final rule monitoring, recordkeeping, and reporting requirements for emissions units that are controlled by fabric filters. These requirements direct facilities to conduct semiannual inspections of fabric filter structure and bags, and to either: (1) Measure and record the pressure drop across the fabric filter once per day, or (2) conduct daily visible emission observations. If visible emissions are detected, the final rule requires that an opacity measurement be made. A weekly rather than daily alternative monitoring frequency is also available for emissions units that utilize high efficiency particulate air (HEPA) filters in combination with fabric filters.

We are also adopting the testing, monitoring, recordkeeping, and reporting requirements and the initial notification and notification of compliance requirements in the part 63 General Provisions (40 CFR part 63, subpart A). We concluded that the part 63 General Provisions are more appropriate for this NESHAP than the part 60 General Provisions that were proposed.

We have clarified the deadline for submission of initial notifications required by § 63.9 of the General Provisions (40 CFR part 63, subpart A). The initial notification of applicability required for existing facilities is due by November 13, 2007. The notification of compliance status is due 60 days after the 1 year deadline for compliance September 15, 2008. We have identified in the final NESHAP the applicable General Provisions of 40 CFR part 63.

The final NESHAP allows existing plants to utilize previously conducted performance tests, when they are representative of current conditions, to demonstrate compliance. Plants without representative prior performance tests are required to conduct performance tests by 180 days after the compliance date.

F. NESHAP for Wood Preserving Area Sources

1. Applicability and Compliance Dates

This final NESHAP applies to new and existing wood preserving plants

that are area sources. The owner or operator of an existing source must comply with all the requirements of this area source NESHAP by July 16, 2007. The owner or operator of a new source must comply by July 16, 2007 or at startup, whichever is later.

2. Emissions Standards and Management Practices

The Wood Preserving area source category was listed for regulation under section 112(c)(3) for its contribution of the following Urban HAP: arsenic, chromium, methylene chloride, and dioxin. The only changes to the rule made since proposal are clarifications of applicability and the required management practices.

We are adopting as the NESHAP for the Wood Preserving area source category the control technologies and management practices that we have determined are generally available, considering cost, for the wood preserving industry. We have revised the rule since proposal to clarify that the management practices and other recordkeeping and notification requirements in the NESHAP apply to those facilities that are using a wood preservative containing arsenic, chromium, dioxins, or methylene chloride.

The NESHAP requires that facilities using a pressure treatment process use a retort or similarly enclosed vessel for the preservative treatment of wood involving any wood preservative containing chromium, arsenic, dioxins, or methylene chloride. Facilities using a thermal treatment process involving any wood preservative containing chromium, arsenic, dioxins, or methylene chloride are required to use process treatment tanks equipped with air scavenging systems to capture and control air emissions.

This final rule also requires facility owners or operators using any wood preservative containing chromium, arsenic, dioxins, or methylene chloride to minimize emissions from process tanks and equipment (*e.g.*, retorts, other enclosed vessels, and thermal treatment tanks), as well as storage, handling, and transfer operations. These standards are to be documented in a management practices plan that must include, but not be limited to, the following activities:

- Minimizing preservative usage;
- Maintaining records on the type of treatment process and types and amounts of wood preservatives used at the facility;
- For the pressure treatment process, maintaining charge records identifying pressure reading(s) inside the retort (or similarly enclosed vessel, if applicable);
- For the thermal treatment process, maintaining records that an air scavenging system is installed and operated properly during the treatment process;
- For the pressure treatment process, we proposed a requirement for facilities to fully drain the retort prior to opening the retort door. In the final rule, we have clarified this provision to require facilities to fully drain the retort to the extent practicable, prior to opening the retort door;
- Storing treated wood product on drip pads or in a primary containment area to convey preservative drippage to a collection system until drippage has ceased;
- Promptly collecting any spills; and
- Performing relevant corrective actions or preventative measures in the event of a malfunction before resuming operations.

Existing written standard operating procedures may be used as the management practices plan if those procedures include the minimum activities required for a management practices plan.

3. Compliance Requirements

No changes have been made since proposal to the compliance requirements for wood preserving facilities. Plants that use any wood preservative containing chromium, arsenic, dioxins, or methylene chloride are required to comply with the notification requirements in the part 63 General Provisions (40 CFR part 63, subpart A). This final rule establishes the content and deadlines for submission of the notifications. We have explicitly identified in this final NESHAP the applicable General Provisions of 40 CFR part 63.

The final standards require recordkeeping to serve as monitoring and deviation reporting to demonstrate compliance. The compliance requirements for new and existing area sources are based on certain notification requirements in the part 63 General Provisions. The initial notification of applicability required by 40 CFR 63.9(b)(2) requires the owner or operator to identify the plant as an area source subject to the standards. The notification of compliance status requires the owner or operator to certify compliance with the standards. No other recordkeeping or reporting requirements in the General Provisions are applicable.

IV. Exemption of Certain Area Source Categories From Title V Permitting Requirements

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

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

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

combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In response to the proposed rule, we received a comment concerning the proposed title V exemptions. In response to this comment, we re-examined the four factors for each of the area source categories for which we had proposed an exemption. As explained below, after evaluating the relevant factors, we again conclude that the requirements of title V would be unnecessarily burdensome on the area source categories for which we proposed an exemption from title V.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As discussed below in sections IV.A through IV.D of this preamble, we have determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. We therefore finalize the proposed exemptions in this rule.

A. Acrylic and Modacrylic Fibers Production

In sections IV.A through IV.D of this preamble, we apply the four-factor balancing test to determine whether title V is unnecessarily burdensome on the area source category. Starting with the first factor, which is to determine whether title V permits would result in significant improvements to the compliance requirements for the Acrylic and Modacrylic Fibers Production area source category, we compared the monitoring, recordkeeping, and reporting requirements of title V permitting to those requirements in the final NESHAP. As noted above (see section III.A of this preamble), the final NESHAP adopts the compliance requirements in the State-issued permit for the one area source plant currently in operation.

Specifically, this final rule requires CPMS to measure and record the water flow rate to the control device (wet scrubber) every 15 minutes and to determine the daily average flow rate. Periodic visual inspections of AN storage tanks equipped with a fixed roof in combination with an internal floating roof must be conducted according to the NSPS requirements in 40 CFR part 60, subpart Kb. This final rule, therefore, contains both continuous and noncontinuous monitoring requirements, which constitute periodic monitoring. Under EPA's Final Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs (71 FR 75422, December 15, 2006) (''Interpretive Rule''), if an applicable requirement, such as a NESHAP, contains periodic testing or instrumental or non-instrumental monitoring (*i.e.*, periodic monitoring), permitting authorities are not authorized to assess the sufficiency of or impose new monitoring requirements on a case-by-case basis; therefore, title V would not impose additional monitoring requirements on sources in this category.

We also considered the extent to which title V could enhance compliance through recordkeeping or reporting requirements, including title V requirements for a 6-month monitoring report, deviation reports, and an annual compliance certification in 40 CFR 70.6 and 71.6. The final rule for acrylic and modacrylic fibers production requires the owner or operator to submit an initial certification of compliance that must be signed by a responsible official. In addition, the owner or operator must determine compliance with daily average operating limits for the water flow rates to each control device on a monthly basis and submit compliance reports to EPA or the delegated authority on a quarterly basis. Should the daily average water flow rate to a wet scrubber control device fall below the operating limits, the plant must notify the delegated authority in writing within 10 days of the identification of the exceedance. Reports of performance test results are required. New and existing sources are also required to comply with the requirements for SSM plans, reports, and records in 40 CFR 63.6(e)(3). When an SSM report must be submitted, it must consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

Records are required to demonstrate compliance with the NSPS inspection and repair requirements for storage tanks in 40 CFR part 60, subpart Kb. Records are also required for the monthly compliance determination for scrubber operating limits. The information required in the final rule is similar to the information that must be provided in the deviation reports and semiannual monitoring reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

This final rule does not require an annual compliance certification report, which is a requirement of a title V permit. See 40 CFR 70.5(c)(9)(iii) and 40 CFR 71.6(c)(5)(i). The EPA believes that the annual certification reporting requirement is not necessary because the initial compliance certification and subsequent quarterly reports are more than adequate to determine compliance for existing sources. New sources must submit notifications and reports required by the part 63 General Provisions. Moreover, the certifications that new and existing sources must submit under the part 63 General Provisions and the final rule include initial notification of compliance status; periodic and immediate reports under the SSM provisions; and reports of excess emissions and monitoring system performance.

The monitoring, recordkeeping, and reporting requirements in the final rule for the Acrylic and Modacrylic Fibers Production area source category are substantially equivalent to such requirements under title V. Therefore, we conclude that title V would not result in significant improvements to the compliance requirements we are promulgating for this area source category.

We evaluated factor two to determine whether title V permitting would impose a significant burden on the area source category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the average annual cost of obtaining and complying with a title V permit was $7,700 per year per source, including fees, or $38,000 per source for a 5-year permit period. See Information Collection Request (ICR) for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. There are certain activities associated with the part 70 and 71 rules that are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and

other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 may help to understand the overall burdens and costs, as well as the relative burdens, of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In considering the second factor for the one existing area source acrylic and modacrylic fibers plant, we examined the potential economic resources of the parent company and whether the source would have any difficulty in obtaining assistance from the permitting authority. Although this area source plant is small (*i.e.*, it is the smallest of the four known plants in the source category), the parent company is a multi-national corporation and is not a small business. In addition, the plant has worked closely with the State permitting authority to obtain State operating permits and a designation as a synthetic minor source, which means the plant must keep HAP emissions below the major source threshold. The State agency has assigned a staff person who is specifically responsible for the permitting of sources at the plant. This staff person is familiar with the production processes, emissions sources, and permitting requirements for the plant; therefore, the staff person can provide permitting assistance as needed. Consequently, we have no evidence that obtaining a title V permit would impose a significant burden on this particular area source or that the burden would be aggravated by any difficulty in obtaining assistance from permitting authorities. However, we do not know what circumstances would exist for new sources in this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. While we concluded that the one existing area source could sustain the cost of title V permit requirements without a significant economic impact on the company as a whole, we do not think the costs for the one existing area source are justified because we do not think title V permitting would lead to gains in compliance by the source. As discussed above for factor one, we determined that the compliance requirements of this NESHAP are substantially equivalent to the requirements of title V. Furthermore, as discussed below for factor four, there are adequate implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP. We conclude, therefore, that the costs of title V are not justified for the one existing area source in this category, even though we concluded the costs would not be burdensome on the existing area source in this category. Furthermore, for new sources, the requirements of title V may be a significant burden and, since we have determined consistent with the first factor that there would not be significant improvements in compliance under title V, we likewise conclude that the cost would not be justified.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. We stated that we believe that the State programs are sufficient to assure compliance with these NESHAP. We also noted that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is ''unnecessary'' to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, that there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. We do not have similar data for this rule because we are issuing this final NESHAP today. In the Exemption Rule, EPA exempted the categories from the requirements of title V after the NESHAP was issued. Although we do not have the type of enforcement data we had in the Exemption Rule, we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce section 112 regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E. There are State programs in place to enforce this area source NESHAP and assure compliance with the NESHAP. In light of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the final rule without relying on title V permitting.

Considering the factors in combination supports the finding in the proposal that title V is unnecessarily burdensome on this area source category. We found in the proposal and again here that title V would not result in significant improvements to the compliance requirements applicable to this area source category and that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Although we concluded that the cost of title V permitting would not be burdensome on the one known existing area source, we cannot conclude that title V would not be a significant burden on new sources in the category. We also found that the cost is not justified because we could not identify any potential gains in compliance within the category if title V were required for this category. Thus, we conclude that title V permitting is ''unnecessarily burdensome'' for the Acrylic and Modacrylic Fibers Production area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also

considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting these area source categories from title V requirements would adversely affect public health, welfare, or the environment. We stated at proposal that exemption of this area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same even if a title V permit were required. We continue to believe that there would be no adverse effects for all of the reasons supporting the exemptions as discussed above.

Importantly, the title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources. We conclude, therefore, that exempting this area source category from title V permitting requirements in the final rule would not adversely affect public health, welfare, or the environment.

Moreover, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, placing all requirements for the one existing area source in a title V permit would do little to clarify the requirements applicable to that source or assist it in compliance with those requirements because of the simplicity of the source and the NESHAP, and the fact that this source is not subject to other NESHAP or to other requirements under the CAA. Given that the emissions profile for new sources should be similar to the existing source, we believe that new sources would be subject to similar CAA requirements.

For the foregoing reasons, we are exempting the Acrylic and Modacrylic Fibers Production area source category from title V permitting requirements.

B. Flexible Polyurethane Foam and Fabrication

As discussed in the proposal, to determine whether title V permits would result in significant improvements to the compliance requirements in the final NESHAP for flexible polyurethane foam production and fabrication area source categories (factor one in determining whether title V permitting is ''unnecessarily burdensome''), we compared the title V monitoring, recordkeeping, and reporting requirements to those requirements in the final NESHAP for these source categories.

This final NESHAP does not contain monitoring or periodic reporting requirements for molded foam production, rebond foam production, and foam fabrication facilities that must eliminate the use of methylene chloride, or for slabstock foam production facilities that elect to totally eliminate the use of methylene chloride. Since these facilities have discontinued the use of methylene chloride entirely, Urban HAP emissions would be reduced without the need for continuous or periodic monitoring of equipment or operations.

For slabstock foam production facilities still using methylene chloride as an ABA, the final NESHAP requires the same periodic monitoring in the form of quantifying methylene chloride usage that must be performed by major sources. Therefore, title V would not add any monitoring to the final NESHAP. See the Interpretive Rule (71 FR 75422, December 15, 2006).

We also considered the extent to which title V could enhance compliance for area sources through recordkeeping or reporting requirements, including title V requirements for a 6-month monitoring report, deviation reports, and an annual compliance certification in 40 CFR 70.6 and 71.6. The final NESHAP requires area source foam plants that have discontinued the use of methylene chloride to certify compliance with the prohibition on methylene chloride in their Notification of Compliance Status reports. For slabstock foam plants still using methylene chloride, the final NESHAP requires the same recordkeeping or reporting that must be performed by major sources. The information required in the final reports and records is similar to the information that must be provided in the deviation reports and required for title V permitting under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

The final NESHAP requires a report if a deviation occurs, but does not require periodic compliance reports. The addition of periodic reports for sources that are subject to monitoring requirements would not result in significant improvements to the compliance requirements in the final NESHAP for these area source categories. The final NESHAP does not require an annual compliance certification report for slabstock facilities that continue to use methylene chloride, as would be required under a title V permit. See 40 CFR 70.5(c)(9)(iii) and 40 CFR 71.6(c)(5)(i). EPA believes that the annual certification reporting requirement is not necessary because the deviation reports are adequate to ensure compliance for new and existing sources. Furthermore, even absent the requirement to submit annual compliance certifications, sources must comply with all emission standards in the NESHAP. In conclusion, we do not believe that title V would lead to significant improvements in the compliance requirements for these categories.

The second factor considered in determining whether title V is ''unnecessarily burdensome'' is whether title V permitting would impose significant burdens on the flexible polyurethane foam production and fabrication area sources and whether these burdens would be aggravated by difficulty they may have in obtaining assistance from permitting agencies. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the true average annual cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA Number 1587.05.

The EPA does not have specific estimates for the burdens and costs of permitting flexible polyurethane foam production and fabrication area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In

addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting programs' requirements.

The ICR for part 70 further explains the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In the proposal, we stated that we believed the cost of a title V program would be a significant burden for the area sources in all the categories that we proposed to exempt. For flexible polyurethane foam production and fabrication, that conclusion was based on the types of smaller establishments that make up these categories. We estimate that over 90 percent of the firms in the NAICS code for these categories are small businesses, with over half the firms having less than 20 employees. We believe that these small sources will likely lack the technical resources needed to comprehend and comply with the permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. Accordingly, we conclude that title V would be a significant burden for these categories because almost all the sources are small businesses with limited resources, and that it would be difficult for them to meet the numerous requirements applicable to sources under part 70 or 71, whether they have a standard or general permit. Also, we are not sure what level of title V related assistance permitting authorities would be able to provide such small sources. Thus, for the final rule, we believe factor two supports title V exemption for flexible polyurethane foam production and fabrication sources because title V compliance would impose a significant economic and non-economic burden on sources in these categories.

The third factor is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We concluded after consideration of the first factor that title V would not result in significant improvements to the compliance requirements in the final rule for flexible polyurethane foam production and fabrication source categories. We also concluded in our consideration of the second factor that title V permitting would be a significant burden on the facilities and that the burden was associated with both the financial cost of compliance as well as the time and effort that these small facilities would have to devote to compliance with title V. Furthermore, as discussed in our consideration of the fourth factor below, there are adequate implementation and enforcement programs in place sufficient to ensure compliance with the NESHAP. Because the costs, both economic and non-economic, are burdensome on these sources, and title V would not lead to significant improvements in compliance with the NESHAP, we conclude that requiring title V permitting is not justified for the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. We stated that we believe that the State programs are sufficient to assure compliance with these NESHAP. We also noted that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is ''unnecessary'' to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, that there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the flexible polyurethane foam production and fabrication NESHAP without relying on title V permitting.

Balancing the four factors for these area source categories strongly supports the proposed finding that title V is unnecessarily burdensome. We determined in the proposal and above that title V would not significantly improve the compliance requirements of the NESHAP and that the requirements of title V would be a significant burden on the facilities. We also determined that the costs of compliance with title V would not be justified because it would not likely lead to gains in compliance with the NESHAP and that there are sufficient implementation and enforcement programs in place to assure compliance without reliance on title V. All four factors weigh in favor of exemption, and we conclude that title V permitting is ''unnecessarily burdensome'' for the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a title V permit were required.

The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources. Therefore, we conclude that exempting the flexible polyurethane foam production and fabrication area sources from title V permitting requirements in these rules will not adversely affect public health, welfare, or the environment.

Moreover, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements applicable to these area sources, as the requirements are not complicated to understand or implement. Furthermore, the sources in this category are not subject to any other NESHAP or CAA requirements to combine into one title V permit. For these reasons, we do not find that title V permitting is necessary to improve understanding of and achieve compliance with these standards.

For the foregoing reasons, we are exempting the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories from title V permitting requirements.

C. Lead Acid Battery Manufacturing

In the proposal, we discussed whether title V permitting was ''unnecessarily burdensome'' for the Lead Acid Battery Manufacturing area source category. Factor one in determining whether title V permitting is ''unnecessarily burdensome'' is to determine whether title V permits would result in significant improvements to the compliance requirements in the final NESHAP. In this NESHAP, we proposed adopting the compliance requirements in the NSPS for lead acid battery manufacturing as the compliance requirements for this area source category. The final rule includes the same provisions and requires monitoring, recordkeeping and deviation reporting to ensure compliance with the NESHAP. Specifically, the final rule requires that a facility using a scrubbing system install, calibrate, maintain, and operate a monitoring device that measures and records the pressure drop across the scrubbing system at least once every 15 minutes. Opacity requirements are zero percent for five of the six emission sources and five percent for the sixth. In addition to these requirements, we are adding in the final rule monitoring, recordkeeping and reporting requirements for emissions units controlled by fabric filters. These requirements direct facilities to perform and keep records of semiannual fabric filter inspections and to either: (1) Measure and record the pressure drop across the fabric filter once per day or (2) conduct daily visible emission observations. If visible emissions are detected, the final rule requires that an opacity measurement be made. The alternative of weekly monitoring is also available for emissions units that utilize HEPA filters in combination with fabric filters.

Each facility must demonstrate compliance by either conducting a performance test or submitting the results of a recent performance test conducted using the methods and procedures in the final NESHAP. Because both the continuous and noncontinuous monitoring methods required by the final NESHAP constitute periodic monitoring, title V would not result in significant improvements to monitoring in the final NESHAP. *See* the Interpretive Rule (71 FR 75422, December 15, 2006).

We also considered the extent to which title V could enhance compliance through recordkeeping or reporting requirements, including title V requirements for a 6-month monitoring report, deviation reports, and an annual compliance certification in 40 CFR 70.6 and 71.6. Records are required to demonstrate compliance. Plants are required to comply with the testing, monitoring, recordkeeping, and reporting requirements in the part 63 General Provisions (40 CFR part 63, subpart A). The information required in the NESHAP is similar to the information that must be provided in the deviation reports and semiannual monitoring reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

The NESHAP for lead acid battery manufacturing requires the owner or operator to submit an initial certification of compliance that must be signed by a responsible official. The NESHAP does not require an annual compliance certification report, as would be required under a title V permit. See 40 CFR 70.5(c 9)(iii) and 40 CFR 71.6(c)(5)(i). EPA believes that the title V annual certification reporting requirement is not necessary because the semiannual reports are adequate to ensure compliance for new and existing sources. Furthermore, even absent the requirement to submit annual compliance certifications, sources must comply with all emission standards in the NESHAP. Therefore, the monitoring, recordkeeping and reporting requirements in the final NESHAP for the Lead Acid Battery Manufacturing area source category are substantially equivalent to requirements under title V. We conclude that title V would not result in significant improvements to the compliance requirements for this area source category.

The second factor considered in determining whether title V permitting is ''unnecessarily burdensome'' is whether title V permitting would impose a significant burden for the Lead Acid Battery Manufacturing area source category and whether that burden would be aggravated by any difficulty these sources may have in obtaining assistance from permitting agencies. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA previously estimated that the true average annual cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05.

EPA does not have specific estimates for the burdens and costs of permitting lead acid battery manufacturing area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the

permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting programs' requirements.

The ICR for part 70 may help to understand the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In considering the second factor for lead acid battery manufacturing, we examined the potential economic resources of the plants and their parent companies and whether they would have any difficulty in obtaining assistance from the permitting authority. There are a few multi-national corporations that own several lead acid battery manufacturing plants that would be subject to this NESHAP, and those facilities would have resources adequate to absorb the economic and non-economic burdens associated with complying with the title V permitting requirements. However, there are many plants that are small businesses for which the title V permitting requirements would be a significant burden, both economic and non-economic. In addition to the small businesses currently subject to the NSPS, there are some small plants [4] that are not subject to the NSPS that will be subject to the NESHAP. These small businesses will be burdened complying with the NESHAP, even if title V compliance is not required.

Through discussions with the industry trade organization, we have learned that very few lead acid battery manufacturing facilities currently are subject to a title V permit for either lead or other criteria pollutants. Some plants have synthetic minor permits to remain below the threshold for title V permitting for criteria pollutants. As such, if title V permits were required the sources would have difficulty obtaining assistance from the permitting authorities as they developed and applied for title V permits. This difficulty stems from the fact that there are about 60 plants in this area source category, and permitting authorities'' resources are limited. Thus, the difficulty sources would have obtaining appropriate guidance from permitting authorities would only increase the already significant economic and non-economic burdens of title V on the small facilities with limited resources.

The third factor is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We evaluated the monitoring, recordkeeping, reporting requirements of the proposed NESHAP when considering the first factor and concluded above that title V would not lead to significant improvements to the compliance requirements for this category. In considering the second factor, we concluded that some of the existing area sources could comply with the title V permit requirements without a significant economic impact on the company as a whole. But, we also concluded that the costs would be a significant burden for small facilities, particularly those not currently covered by the NSPS because they would have to comply with the NESHAP and title V simultaneously. In addition, under the fourth factor below, we find that there are adequate implementation and enforcement programs in place to enforce the provisions of the NESHAP. We believe that the costs of compliance with title V are, therefore, not justified for this area source category given the little potential for gain in compliance benefits.

The fourth factor we considered is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with this NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. While we did not state this in the proposal, we know that States have been enforcing the NSPS on which the NESHAP is based for this source category for some time and that the State programs are sufficient to assure compliance with these NESHAP.

We noted at proposal that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113 and 114. We concluded that title V permitting is ''unnecessary'' to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, that there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption Rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

Balancing the four factors for this area source category supports the proposed finding that title V is unnecessarily burdensome. In considering the first factor, we concluded that title V would not lead to significant improvements in the compliance requirements. We concluded after consideration of the second factor that title V would impose a significant burden on the small facilities, particularly those not subject to the NSPS, but that the burden would not be significant for sources owned by larger companies. We concluded that the costs would not be justified given the little potential gain in the compliance likely to occur. We also determined that there are adequate implementation and enforcement programs in place to enforce the NESHAP and, furthermore, States have in fact been enforcing the provisions of the NSPS. All four factors individually support exemption, and collectively they support the finding in the proposal. Therefore, we conclude that title V permitting is ''unnecessarily

[4] The new source performance standard (NSPD) applied only to plants that produced or had the design capacity to produce in one day batteries containing an amount of lead equal to or greater than 5.9 megagrams (6.5 tons).

burdensome'' for the Lead Acid Battery Manufacturing area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Lead Acid Battery Manufacturing area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Lead Acid Battery Manufacturing area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources. There is no evidence in the record that leads us to question these conclusions. Therefore, we conclude that exempting the lead acid battery manufacturing area sources from title V permitting requirements in this rule will not adversely affect public health, welfare, or the environment.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements applicable to the lead acid battery manufacturing area sources. These plants are straightforward in design and are not covered by regulations with requirements that are very complicated to understand or implement. The permits we have examined for the Lead Acid Battery Manufacturing area source category currently consist of a single document that applies to all sources and to lead and the other criteria pollutants emitted. For these reasons, we do not find that title V permitting is necessary to improve understanding of and achieve compliance with these standards.

For the foregoing reasons, we are exempting the Lead Acid Battery Manufacturing area source category from title V permitting requirements.

D. Wood Preserving

As discussed in the proposal, we compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the NESHAP for the Wood Preserving area source category. EPA determined that the management practices currently used at most facilities is GACT and the rule requires recordkeeping that serves as monitoring and deviation reporting to ensure compliance with the NESHAP. The monitoring component of the first factor favors title V exemption because title V is unnecessary to provide adequate monitoring for wood preserving area sources. Because the NESHAP requires management practices for certain treatment processes and requires recordkeeping designed to serve as monitoring, additional monitoring requirements that might be added under title V would be unnecessary to assure compliance. Monitoring other than recordkeeping is not practical or appropriate in this case because the requirements are management practices. Records are required to ensure that the management practices are followed, including records of the type of preservative treatment process used, the types and quantities of preservatives used, and charge records of retort pressure.

As part of the first factor, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this final rule through recordkeeping or reporting requirements. For any affected wood preserving area source facility, the NESHAP requires an initial notification, a compliance status report, and deviations must be reported within 30 days. We considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6.

The wood preserving NESHAP also requires affected facilities to certify compliance with the management practices required by the rule. In addition, wood preserving facilities must maintain records showing compliance with the required management practices and report deviations. The information required in the deviation reports and records is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3). We acknowledge that title V might impose additional compliance requirements on this category, but, as stated in the proposal, we conclude that the monitoring, recordkeeping and reporting requirements of the NESHAP for wood preserving are sufficient to ensure compliance with the provisions of the NESHAP, and title V would not significantly improve those compliance requirements.

Under the second factor, we determine whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. The EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. The EPA does not have specific estimates for the burdens and costs of permitting wood preserving area sources; however, there are certain source activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the source. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of professional scientists and engineers (consultants) to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70

sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for wood preserving facilities, we found that over 90 percent of the 393 plants are small businesses, most with only a few employees. These small sources lack the technical resources needed to comprehend and comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant economic and non-economic costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. Most are small businesses with limited resources, and under title V they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Furthermore, given the large number of sources in the category and the relatively small size, it would likely be difficult for them to obtain assistance from the permitting authority. Thus, we find that factor two strongly supports title V exemption for wood preserving facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the economic and non-economic costs of compliance with title V would impose a significant burden on most of the 393 wood preserving facilities. We also concluded in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the NESHAP assure compliance with the management practices imposed in the NESHAP. In addition, below in our consideration of the fourth factor we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are so high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for wood preserving area sources.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. In the proposal, we considered whether there are State programs in place to enforce these area source NESHAP. We stated that we believe that the State programs are sufficient to assure compliance with these NESHAP. We also noted that EPA retains authority to enforce these NESHAP anytime under CAA sections 112, 113, and 114. We concluded that title V permitting is ''unnecessary'' to assure compliance with these NESHAP because the statutory requirements for implementation and enforcement of these NESHAP by the delegated States and EPA are sufficient to assure compliance with these area source NESHAP without title V permits. We also noted that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these area source NESHAP and concluded that in light of all of the above, there are implementation and enforcement programs in place that are sufficient to assure compliance with these NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we did not have similar data available on the specific enforcement as in the Exemption rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E.

In light of all of the above, we conclude that there are implementation and enforcement programs in place that are sufficient to assure compliance with the Wood Preserving NESHAP without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we concluded that there would not be significant improvements to the compliance requirements in the NESHAP because the requirements in this final rule are specifically designed to assure compliance with the standards and management practices imposed on this area source category. We also concluded that the economic and non-economic costs of compliance with title V, in conjunction with the likely difficulty this large number of small sources would have obtaining assistance from the permitting authority, would impose a significant burden on the sources. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Thus, we conclude that title V permitting is ''unnecessarily burdensome'' for the Wood Preserving area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also considered at proposal, consistent with guidance provided by the legislative history of section 502(a), whether exempting the Wood Preserving area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the Wood Preserving area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources to achieve

compliance with the requirements. In this case, however, placing all requirements for the sources in a title V permit would do little to clarify the requirements applicable to the sources or assist them in compliance with those requirements because of the simplicity of the sources and the NESHAP, and the fact that these sources are not subject to other NESHAP or to other requirements under the CAA. We have no reason to think that new sources would be substantially different from the existing sources. In addition, we explained in the Exemption Rule that requiring permits for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. For the final rule, we conclude that title V exemptions for the wood preserving area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the foregoing reasons, we are exempting the Wood Preserving area source category from title V permitting requirements.

V. Summary of Comments and Responses

We received a total of 18 comments on the proposed NESHAP from seven industry trade associations, representatives of eight affected facilities, one environmental group, and two State agencies during the public comment period. Sections V.A through V.J of this preamble provide responses to the significant public comments received on the proposed NESHAP.

A. Basis for Area Source Standards

Comment: One commenter stated that EPA's decision to issue GACT standards pursuant to section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (d)(3), for six of the seven area source categories at issue in the proposed rule is arbitrary and capricious because EPA provided no rationale for its decision to issue GACT standards. The commenter makes this argument for the following six source categories: Acrylic and modacrylic fibers production, carbon black production, chemical manufacturing: Chromium compounds, flexible polyurethane foam production/flexible polyurethane foam fabrication, and lead acid battery manufacturing.

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

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

There are two critical aspects to section 112(d)(5). First, section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to section 112(c). The commenter does not dispute that EPA listed the six area source categories noted above pursuant to section 112(c)(3). Second, section 112(d)(5) provides that for area sources listed pursuant to section 112(c), EPA *''may, in lieu of''* the authorities provided in section 112(d)(2) and 112(f), elect to promulgate standards pursuant to section 112(d)(5). Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as MACT). Section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. See section 112(d)(3).[5] Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' See Webster's II New Riverside University (1994). Thus, section 112(d)(5) authorizes EPA to promulgate standards under section 112(d)(5) that provide for the use of generally available control technologies or management practices (GACT), *instead of* issuing MACT standards pursuant to section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.[6]

The commenter argues that EPA must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. The commenter is incorrect, however. Had Congress intended that EPA first conduct a MACT analysis for each area source category and only if cost or some other reason made applying the MACT standard inappropriate for the category would EPA be able to issue a standard under section 112(d)(5), Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis, before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA has no obligation to justify why it is issuing a GACT standard for an area source category as opposed to a MACT standard, EPA must set a GACT standard that is consistent with the requirements of section 112(d)(5) and have a reasoned basis for its GACT determination. As explained in the proposed rule and below, in determining what constitutes GACT for a particular area source category, EPA evaluates the control technologies and management practices that reduce HAP emissions that are generally available for the area source category. See 72 FR 116638. The legislative history supporting section 112(d)(5) provides that EPA may consider costs in determining what constitutes generally available control technologies or management practices for the area source category (GACT).[7] EPA cannot consider cost in setting MACT floors,

[5] Specifically, section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best-controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best-performing 12 percent of the existing sources for which the Administrator has emissions information. Section 112(d)(2) directs EPA to consider whether more stringent—so called beyond-the-floor limits—are technologically achievable considering, among other things, the cost of achieving the emission reduction.

[6] Section 112(d)(5) also references section 112(f). See CAA section 112(f)(5) (entitled ''Area Sources'' and providing that EPA is not required to conduct a review or promulgate standards under section 112(f) for any area source category or subcategory listed pursuant to section 112(c)(3) and for which an emission standard is issued pursuant to section 112(d)(5)).

[7] Additional information on the definition of ''generally available control technology or management practices'' (GACT) is found in the Senate report on the 1990 amendments to the Clean Air Act (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). That report states that GACT is to encompass: . . . methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

pursuant to section 112(d)(3). Congress plainly recognized that area sources differ from major sources, which is why Congress permitted EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not permit that consideration in setting MACT floors for major sources. This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states—provide EPA the authority to issue ''[a]lternative standards for area sources.'' EPA properly issued standards for the area source categories at issue here under section 112(d)(5), and as demonstrated below, EPA has a reasoned basis for each of its GACT determinations.

Finally, even accepting, for arguments sake, the commenter's assertion that EPA must provide a rationale basis for setting a GACT standard as opposed to a MACT standard, we did so in the proposed rule. In the proposal, we explained that we can and do consider costs and economic impacts in determining GACT. We also explained that the facilities in the source categories at issue here are already well controlled for the Urban HAP for which the source category was listed pursuant to section 112(c)(3). See 72 FR 16638. We believe the consideration of costs and economic impacts is especially important for the well-controlled area sources at issue in this final action because, given current well-controlled levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for the area source category.

Comment: One commenter stated that EPA's alternative proposal (72 FR 16647) that GACT is no further emissions reduction for existing area sources in three source categories (chromium compounds manufacturing, carbon black production, and acrylic and modacrylic fibers production) is unlawful and arbitrary. The commenter stated that the Agency provided no basis whatsoever for concluding that GACT is no further emission reduction. In particular, the commenter claimed that EPA provided no basis for concluding that: (1) Chromium compounds manufacturers cannot reduce their emissions of such pollutants through the use of generally available control measures, (2) carbon black manufacturers cannot reduce all their emissions of HAP at least to the 98 weight percent reduction or 20 ppmv standards, and (3) acrylic and modacrylic fibers manufacturers cannot reduce their emissions of HAP at least to the levels EPA has identified as GACT.

Response: In the preamble to the proposed rule for the Acrylic and Modacrylic Fibers Production area source category, we solicited comments as follows:

> We are alternatively proposing that GACT for this existing area source is no further emission reduction. We request comment on the basis, consistent with section 112(d)(5), for asserting that GACT is no further control for the existing source. We request comment on this issue because the standard proposed above will not result in any emission reductions beyond what is already required by the State permit to which the existing facility is already subject.

We included the same request for comments in the preamble for the Chemical Manufacturing: Chromium Compounds area source category and the Carbon Black Production area source category. We are not finalizing this approach in the final rule. Rather, we are finalizing the proposed emissions standards with minor changes.

B. Proposed NESHAP for Acrylic and Modacrylic Fibers Production Area Sources

Comment: One commenter stated that EPA's decision to reject steam stripping of wastewater streams as GACT for the one existing area source plant on cost effectiveness grounds is unlawful and arbitrary. The commenter asserted that in the proposed rule, EPA did not dispute that steam stripping was commercially available and appropriate and did not claim that the economic impact was too great. The commenter further asserted that EPA presented only its own subjective views on cost effectiveness, which are not relevant under section 112(d)(5).[8] According to the commenter, EPA's decision to reject steam stripping is arbitrary because the Agency did not consider the relevant factors (availability, appropriateness, and cost) in determining what constitutes GACT. The commenter further stated that EPA failed to explain why it based its rejection of steam stripping on its claims about cost effectiveness or to explain why it did not consider the reductions cost effective.

Response: As stated in the preamble to the proposed rule (72 FR 16638, April 4, 2007):

> Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

Prior to proposal, we reviewed the generally available control technologies and management practices that have been applied to wastewater at the one existing acrylic and modacrylic fibers area source plant. This plant has a wastewater stream with a low concentration of AN, and the wastewater is processed in a wastewater treatment system to remove organic compounds and degrade the AN. We also considered the control technologies and management practices employed at major sources in this category for treating wastewater streams and determined that the major sources were treating similar low-HAP concentration wastewater streams in the same manner as the area sources in this category. We also evaluated the feasibility of steam stripping to remove the AN even though it was not employed in the category for low-HAP concentration wastewater streams. We stated at proposal that steam stripping the wastewater stream would require a capital expenditure of $700,000 with a recurring total annualized cost of $630,000 per year. We stated that, assuming a 90 percent removal rate, the emissions reduction from steam stripping for the existing area source facility would be 7 tpy. The cost effectiveness would be $90,000 per ton of AN.[9] We determined that steam stripping of the wastewater stream at the only known existing area source was not appropriate for application for the source because it was not cost effective. See *e.g.*, *Husqvarna AB* v. *EPA*, 349 U.S. App. DC 118, 254 F.3d 195, 201 (DC Cir. 2001) (Finding EPA's decision to consider costs on a per ton of emissions removed basis reasonable because CAA section 213 did not mandate a specific method of cost analysis). Consequently,

[8] The commenter cites legislative history, noting that GACT must reflect the ''methods, practices and techniques that are commercially available and appropriate for application by the sources in the category considering economic impacts'' (72 FR 16638, quoting S. Rep. No. 101–228, at 171–172).

[9] We recognize that in other contexts the effectiveness of steam stripping is 96 percent, which results in a cost effectiveness of $85,000 per ton of AN.

we concluded that GACT was the plant's current management practice of processing the water in a wastewater treatment system.

In response to comments, we evaluated plants in similar industrial categories (*e.g.*, the synthetic organic chemical manufacturing industry subject to subpart G in 40 CFR part 63) and found that the general management practice for low-HAP concentration wastewater streams is to process the water in a wastewater treatment system similar to that employed by the existing acrylic and modacrylic area source. We conclude here that the current practice employed at the existing facility is GACT and, consistent with our finding at proposal, stream stripping is not GACT for this area source category.

Comment: One commenter stated that the proposed rule for existing sources was very specific to the one area source plant that EPA identified and stated that it should more appropriately be based on efficiencies or concentrations to allow some operating flexibility. While the commenter acknowledged that this facility is the only acrylic fiber manufacturer currently known to be an area source, the commenter believed that future facilities may struggle to comply with such site-specific requirements. Specifically, the commenter suggested that the proposed emissions limit for polymerization process equipment, which is expressed in terms of pounds per hour (lb/hr), should be written more generally for different types of processes and control equipment that might be used and should require a control efficiency or outlet concentration. According to the commenter, this would more closely match the approach provided for new sources which used efficiency and concentration limits.

The commenter also noted that the control device parameter operating limit for existing sources specifies the water flow rate of the scrubbers. The commenter stated that the standard should require the operating parameters to be established based on performance testing. The commenter asserted if past testing is used and parameters were previously set, this should still be acceptable. According to the commenter, this approach would allow the existing facility flexibility to change these parameters based on performance testing should it become necessary.

Response: We agree that the proposed emission limit for process vents is very site-specific to the one known area source plant. We are providing existing sources with the option of complying with the standards for new sources. Although the standards for new and existing sources are expressed in different formats, both standards require the same level of emission control, and both ensure that the technology identified as GACT is in place. Thus, the compliance alternative we are adopting in the final rule provides an equivalent level of control and additional flexibility for existing sources to demonstrate compliance with the NESHAP.

We also agree with the commenter's suggestion about establishing operating limits for the scrubbers during a performance test and have revised the rule accordingly. The scrubber water flow must be monitored during the performance test, and the test must demonstrate compliance with the emission limit. The operating limit for scrubber water flow is determined from the lowest average flow rate during any test run that shows compliance with the emissions limit.

C. Proposed NESHAP for Carbon Black Production Area Sources

Comment: Two commenters stated that there are no area sources in the source category producing carbon black by the furnace or thermal processes. The commenters believed that the 2002 National Emissions Inventory (NEI) incorrectly designated the Degussa Engineered Carbon facility in Belpre, Ohio, as an area source. Both commenters claimed that the emissions reported in the NEI and the 2005 Toxics Release Inventory (TRI) from this facility, which are below the major source thresholds, represent levels after control but that the uncontrolled ''potential to emit'' emissions are considerably above the major source thresholds.

The commenters asserted that this facility was identified as the only existing area source in the category and was used to form the basis for GACT. The commenters stated that EPA determined GACT based on this mistaken identification of the Belpre, Ohio facility as an area source. The commenters requested that EPA reconsider its GACT determination in light of the fact that the source considered in making such a determination is a major source and that GACT determinations require considerations of economics and a technical feasibility for the smaller sources outside of the major source category. The commenters stated that GACT for area sources should be less stringent than MACT for major sources due to the financial and technical considerations that would apply to a smaller area source.

Response: The identification of the Degussa plant in Belpre, OH as an area source was due in part to the information in the NEI and TRI as suggested by the commenters. We also reviewed the plant's title V permit, which expires in December 2007. The permit indicated that the plant was a major source of criteria pollutants and not a major source of HAP emissions. The permit also did not indicate that the plant was subject to the MACT standard in subpart YY (40 CFR part 63). While we were aware of the plant's recent permit renewal application that incorporated the provisions of subpart YY, it was still unclear whether the plant was a major source of HAP. However, since one of the commenters is the plant itself, we accept that we made an error in considering this facility to be an area source.

In light of this new information, we reevaluated our GACT determination for existing carbon black area sources. As stated in the proposal preamble (72 FR 16638, April 4, 2007):

> Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

Given that there are no current area sources, we examined all existing carbon black plants, which happen to be all major sources. Those sources have applied technologies to reduce organic HAP emissions from main unit process vent streams with concentrations of 260 ppmv or greater. The control technologies typically used for this source category are flares and incinerators. These control technologies have also been widely applied to many emission sources in other similar industrial source categories, such as process vents at petroleum refineries and chemical plants. These control technologies are therefore generally available.

Even if by some mechanism an existing major source becomes an existing area source, that facility would already have the necessary controls in

place and the facility would incur no additional costs in response to this final NESHAP. The facility would not be able to remove or discontinue use of any of the controls because they would likely exceed the major source thresholds (i.e., the commenters pointed out that their potential to emit based on emissions before control exceeds major source thresholds). Further, the controls were installed to meet permit limits for criteria pollutants, and these requirements would not change just because a source became an area source of HAP emissions.

Accordingly, after considering the availability of the above-identified control technologies, which provide the most effective control of HAP emissions from these processes, their demonstrated applicability to carbon black facilities and similar emission sources, and their reasonable costs for vent streams with concentrations above 260 ppmv, we are finalizing the standard for carbon black area sources set forth in the proposal.

Comment: One commenter stated that EPA's decision to provide a 260 ppmv applicability cutoff in the proposed rule for carbon black producers is based on factors that are irrelevant to the establishment of GACT standards under section 112(d)(5) and devoid of any rational explanation. According to the commenter, EPA determined that GACT for carbon black manufacturing is either a 98 weight-percent reduction in HAP emissions or a 20 ppmv concentration standard. The commenter claimed that EPA proposed to allow sources to meet an alternative 260 ppmv standard. According to the commenter, EPA's only explanation for allowing sources to emit 13 times as much HAP as its own GACT standard would allow is that ''this cutoff represents the lowest control device inlet concentration reported at one of the best-controlled facilities'' and ''we do not have available information to indicate that the single existing area source controls process vent emissions with concentrations below this level.'' The commenter asserted that EPA did not explain the relevance of either of those claims to its determination of GACT. According to the commenter, the control device inlet concentration at any given source is in no way indicative of the emissions level that can be achieved by the technology that EPA itself has recognized as GACT and therefore, it is irrelevant to the GACT determination. The commenter also claimed that because control device inlet information is irrelevant under section 112(d)(5), EPA's decision to base an alternative GACT decision on such information is arbitrary and that EPA's complete failure to explain why it would base its GACT decision on such information or why it believed that such information is even relevant to the determination of GACT is also arbitrary.

The commenter stated that to the extent EPA based its decision on the fact that the single source currently in the area source carbon black category does not currently control vent emissions streams below the 260 ppmv level, its decision is unlawful. The commenter asserted that EPA's obligation under section 112(d)(5) is to base standards on control measures that are commercially available and appropriate for the category. According to the commenter, the fact that a source has not already voluntarily controlled its emission streams below a given level does not mean that control technology is not commercially available for use on such streams or that the use of such technology is not appropriate. The commenter stated that EPA did not even suggest that using a flare or incinerator to control emissions from vent streams with concentrations below 260 ppmv is either technically or economically infeasible.

Response: As noted above, other commenters reported that the facility originally identified as the only existing area source in this category (upon which the proposed GACT requirements were based) is in fact a major source. Therefore, as we stated in the previous response, we reevaluated GACT for this category and determined that for sources with process vent stream emissions of 260 ppmv or greater, the technology that applies at major sources (i.e., flares or incinerators) is transferable to area sources. We have no emissions data for process vent streams below 260 ppmv, as the major sources are not required to control below this level.

As an initial matter, we reject the commenter's statement that control device inlet concentration is not relevant. The inlet concentration and other stream characteristics (*i.e.*, the characteristics of the uncontrolled emission stream) are directly related to both the effectiveness and the cost of a control device. For example, the heating value of components of the inlet stream is a key component in the effectiveness and cost of a flare. Therefore, the concentration affects flame stability, emissions, and flame structure. A lower concentration (and thus lower heating value) produces a cooler flame that does not favor combustion kinetics and is also more easily extinguished. While these limitations can sometimes be overcome through the use of auxiliary fuels, this increases the costs. Therefore, we believe that the use of concentration is an appropriate consideration in determining GACT for this source category.

Flares and incinerators are established control technologies that are generally available for this source category for POM, which is the Urban HAP for which this source category was listed. Therefore, we analyzed the potential impacts associated with a requirement to control process vent streams with organic HAP concentrations of 260 ppmv or less. We estimate that the cost effectiveness of controlling a 260 ppmv stream with a flare would be around $19 million per ton of POM emission reduction (carbon black production was listed as an area source category based on emissions of POM). The cost effectiveness of an incinerator was estimated to be almost $25 million per ton of POM reduction. We believe that the costs of requiring the control of process vent streams with organic HAP concentrations less than 260 ppmv are cost prohibitive and therefore do not represent methods, practices, and techniques which are generally available for application by the sources in this category. Therefore, the final rule retains the 260 ppmv applicability threshold.

D. Proposed NESHAP for Chemical Manufacturing Area Sources: Chromium Compounds

Comment: One commenter objected to the proposed standard requiring plants to operate a capture system that collects gases and fumes from each emissions source and conveys the gases to a PM control device because, according to the commenter, EPA did not say how efficient either the capture system or the PM control device must be. The commenter also stated that EPA appears to indicate that any capture system and control device will do, but the commenter acknowledged that EPA did provide equations that appear to establish numerical limits on PM emissions on a pounds per hour basis. The commenter stated that EPA's apparent assumption that all PM control is the same and equally sufficient for controlling emissions from this source is at odds with the record evidence and is arbitrary.

According to the commenter, not all PM controls are equally effective. The commenter stated that ''it is plain from the discussion of PM controls provided by both EPA itself and ICAC that PM controls vary widely in effectiveness, and is plain that chromium compound manufacturers could reduce their emissions of hexavalent chromium and

other HAP by using more effective PM controls.'' Examples given by the commenter include more effective fabric filters such as filters with better fabric or better baghouse design and more effective scrubbers.

According to the commenter, EPA did not consider the possibility of requiring any controls other than those that are currently in use and did not discuss which technologies are currently available, their effectiveness, or how much they cost. The commenter asserted that EPA's rejection of more effective controls without even considering them is arbitrary and capricious.

Response: We disagree with the commenter's statement that EPA concluded that any capture system or any control device is, as the commenter implies, sufficient in the abstract to comply with the NESHAP. EPA established numerical emissions limits for chromium, using PM as a surrogate, and the emissions limits are established by equations set forth in the rule. The commenter stated that the equations ''appear'' to establish numerical emission limits, and, in fact, the equations do establish such limits on a pounds per hour basis, and the commenter's implication that they do not is unsupported.

Further, we disagree with the commenter that we assumed that all PM control devices are equally effective. We proposed an emissions standard for the metal HAP at issue using PM as a surrogate. The PM emissions standard identified as GACT was based on control technologies that are generally available, considering cost, and represent a level of control that has been achieved at the two existing chromium compound manufacturing facilities.

As we discussed earlier, in determining GACT for area sources, we examine the demonstrated and generally available controls at area sources in the source category. See 72 FR 16638, April 4, 2007. We also consider the standards applicable to major sources in the category and determine if those controls are generally available and transferable to area sources. See 72 FR 16638, April 4, 2007. In addition, in appropriate circumstances, we may consider technologies employed at similar industrial source categories. See 72 FR 16638, April 4, 2007. We also consider cost and economic impacts of generally available control technologies or management practices on a source category in determining GACT. See 72 FR 16638, April 4, 2007.

In this case, at proposal, we evaluated the control technologies that are used by the existing chromium compound manufacturing area source facilities. The two processes with the greatest emissions potential are the high temperature operations of the rotary kilns used for roasting the chromite ore and the processes used for quenching the hot kiln roast. Both plants use a combination of wet scrubbers and electrostatic precipitators in series for one or both of these processes. This combination of wet scrubbers and electrostatic precipitators has been demonstrated as effective for this source category and is generally available.[10] Thus, we established GACT based on the current controls employed at the two area sources in this category. We did not find that the costs and economic impacts of compliance would be significant because the controls that we determined were generally available in the category were being employed at the existing facilities, and nothing in the record indicated that the costs would be prohibitive for new sources.

There are no major sources in this category, and we did not consider similar source categories at proposal. In response to comments, however, we have evaluated similar primary metal industries. We have found that electrostatic precipitators, often in combination with scrubbers, the same controls employed by the emissions sources in this category, are the commonly used control devices for the smelting or roasting operations in other primary metal industries, including primary steel, primary copper, and primary zinc production. We affirm our conclusion that the proposed controls are GACT for this area source category. The proposed standard, with minor changes discussed elsewhere, is finalized in this rulemaking.

Comment: One commenter requested clarification of the performance test requirements. The commenter pointed out that for an existing facility, the proposed rule allows certification of compliance with the emission limits based on a previous performance test conducted within the past 5 years; otherwise, a facility must conduct tests to demonstrate initial compliance. The commenter noted that the proposed rule conflicted with the General Provisions table which indicates that performance test requirements apply to an existing source only if the permitting authority requests the tests. The commenter stated that he initially understood that EPA would require initial performance tests only if requested by the permitting authority. According to the commenter, the two affected plants that produce chromium compounds from chromite ore are currently performing adequate monitoring, recordkeeping, and reporting to demonstrate compliance with the proposed emissions limits, and any decision to require performance tests should be at the discretion of the permitting agency.

Response: We acknowledge that the current title V permits for the affected plants require performance testing only at the request of the permitting authority. However, the final rule requires performance testing if a valid performance test has not been conducted within the 5 years prior to the effective date of the final rule. We found that performance tests have not been conducted within the past 5 years at the two existing plants, and a few minor emissions sources have never been tested. An initial performance test or a recent performance test is very important to ensure that the control devices are operating as designed and can be shown to meet the applicable emissions limit. Although the plants have performed the monitoring, reporting, and recordkeeping required by their permits, we cannot correlate the monitoring results to the performance of the control devices to ensure the emissions limits are met unless a performance test has been conducted to demonstrate this. Once a performance test has demonstrated compliance, we will have assurance that subsequent monitoring will ensure that the emissions sources continue to operate as designed and as demonstrated by the performance test.

The commenter is correct in that there were conflicting entries in the General Provisions table of the proposed rule for performance test requirements. We have corrected the table in the final rule to clarify the performance test requirements as discussed above.

Comment: One commenter requested that EPA clarify the definition of a ''new'' affected source. The commenter asked if a new affected source includes new or reconstructed equipment at an existing site, or is a new affected source a new or reconstructed chromium chemical manufacturing facility. The commenter suggested that EPA add a definition of ''chromium compounds manufacturing facility.''

Response: The proposed rule stated that the ''affected source'' is ''each chromium compounds manufacturing facility.'' We have added a definition of ''chromium compounds manufacturing facility'' to further clarify what the affected source is. A new affected source is one for which construction or

[10] The effectiveness of these controls is shown by the TRI reporting for the North Carolina plant with a 95 percent reduction in chromium emissions since the control technology identified as GACT was installed.

reconstruction commenced after April 4, 2007. The definitions of ''construction'' and ''reconstruction'' are given in the General Provisions (40 CFR 63.2).

Comment: One commenter objected to the proposed requirements for initial control device inspections for plants that are already implementing the inspection requirements according to an established schedule in an approved title V permit. The commenter claimed that the proposed requirement for initial inspections will result in increased costs and result in shutdown of key emissions sources and control devices that are not due for inspection until 2008 and 2009. The commenter provided an example of kilns that must be shutdown and cooled before the internal components of the electrostatic precipitators can be inspected. According to the commenter, the shutdown and cooling period for the kilns takes several days and results in significant cost in terms of lost production and other expenses. As an alternative, the commenter suggested that EPA require an initial inspection prior to startup for installed control devices which have not operated within 60 days of the compliance date.

Response: Our intent at proposal was to codify the control device inspection requirements currently in the permit of the North Carolina plant because we determined that these requirements represent what is generally available, and this plant had inspection requirements that were more comprehensive than those at the other area source plant. The proposed inspection requirements included daily, monthly, annual, and biennial inspections for various control devices and their components. To perform the internal inspection, it is necessary to shut down the process (the high temperature kilns) and allow the system to cool down. We agree that the 24-month period as stated in the permit is reasonable for this particular type of inspection. It provides flexibility to the facility to perform the inspection during periods of regularly scheduled kiln maintenance, which minimizes the disruption to production and the large expense that would result from a mandatory initial inspection and subsequent annual inspections. The operating processes also have to be shut down for the annual internal inspections of baghouses and wet scrubbers. Consequently, we have revised the rule to state that an initial inspection of the internal components of electrostatic precipitators does not have to be performed if an inspection has been performed within the past 24 months. The next inspection must be performed within 24 months of the last inspection, and subsequent inspections of the internal components must be performed for each following 24-month period. Similarly, an initial inspection of the internal components of baghouses and wet scrubbers does not have to be performed if an inspection has been performed within the past 12 months. The next inspection must be performed within 12 months of the last inspection, and subsequent inspections of the internal components must be performed for each following 12-month period. However, we continue to require initial inspections that do not require shutting down the process and control device, such as inspecting baghouses and ductwork for leaks, verifying the proper operation of electrostatic precipitator parameters, and water flow to wet scrubbers.

We agree with the commenter's suggestion that we require an initial inspection prior to startup for installed control devices which have not operated within 60 days of the compliance date. This inspection can be performed before process operations resume and thus would not require a disruptive shutdown.

Comment: One commenter asked if annual inspection requirements for wet scrubbers apply to cyclonic scrubbers prior to wet electrostatic precipitators. According to the commenter, this is not a requirement in the current title V permit and would not be consistent with EPA's approach of codifying the monitoring requirements currently applicable to the North Carolina plant.

Response: Our intent at proposal was to be consistent with the established inspection requirements in the title V permit of the North Carolina plant. The permit requires internal inspections of electrostatic precipitators, wet scrubbers, and baghouses that are used as primary control devices. Internal inspections of cyclonic scrubbers that are installed upstream of the electrostatic precipitators are not required by the permit, nor do we believe they are needed. Unlike electrostatic precipitators, cyclonic scrubbers do not have complex internal components subject to failure that would affect emissions control performance. Consequently, we are clarifying that annual internal inspections of cyclonic scrubbers installed upstream of electrostatic precipitators are not required. However, we continue to require monitoring for the cyclonic scrubbers, including the presence of water flow and visual inspections of the system ductwork and scrubber unit for leaks.

Comment: One commenter requested changes to the process description in the preamble to the proposed rule and corresponding revisions and clarifications to Table 1 of the proposed rule which identifies the regulated process equipment. The commenter stated that the table should be titled ''Emissions Sources'' instead of ''Emissions Points''; the ''filter for sodium chromate slurry'' should be changed to ''residue dryer system''; the ''reactor used to produce chromic acid'' should be changed to the ''melter used to produce chromic acid''; and the ''sodium dichromate evaporation unit'' should be removed from the table because there are no chromium emissions from this unit at either plant.

Response: We agree that the table is a listing of emission ''sources'', and we will clarify that the production of chromic acid occurs in a ''melter.'' We also agree that we inadvertently included the filter for sodium chromate slurry, which is not an emissions source, and should have included instead the residue dryer system, which is an emissions source. We identified the sodium dichromate evaporation unit as a process at the chromium compound manufacturing plants. However, this process operates under a vacuum to reduce the water content at temperatures far below the temperatures that would be needed to volatilize chromium compounds in the wet slurry into PM. This process is not an emissions source for PM and was therefore not identified in the title V permit as an emission source. Consequently, we are deleting the sodium dichromate evaporation unit from the table of emissions sources.

Comment: One commenter noted that the General Provisions table in the NESHAP should be revised to eliminate duplication of entries for § 63.10(e)(1) and (e)(2).

Response: We agree and have corrected the table to eliminate the duplication.

E. Proposed NESHAP for Flexible Polyurethane Foam Production and Fabrication Area Sources

Comment: One commenter stated that one HAP emitted by flexible polyurethane foam production and fabrication facilities is methylene chloride. According to the commenter, EPA indicated in the preamble that methylene chloride is used by stabstock foam plants as an ABA and an equipment cleaner, and that molded and rebond foam plants use methylene chloride as a mold release agent and an equipment cleaner. The commenter noted that for slabstock foam plants EPA

proposed either to prohibit the use of methylene chloride or to establish certain requirements for its use.

The commenter asserted that EPA must prohibit the use of methylene chloride at slabstock facilities based on the following statement from the proposal preamble: ''[b]ased on recent contacts with the industry, we have verified that every known slabstock facility has converted their process to use a non-HAP technology (72 FR 16649).'' The commenter stated that EPA's failure to require the use of non-HAP technology it acknowledges to be GACT is unlawful and arbitrary. Also arbitrary, according to the commenter, is the Agency's failure to explain its decision to allow facilities to continue to use methylene chloride with various control requirements, given its own conclusion that a ban on the use of methylene chloride is GACT.

Response: The proposed regulation addressed eight different types of situations where methylene chloride could potentially be used at flexible polyurethane foam production and flexible polyurethane foam fabrication facilities. For seven of these potential use situations, the proposed rule prohibited the use of methylene chloride. The lone situation where the proposed rule did not prohibit the use of methylene chloride was as an ABA in the production of slabstock flexible polyurethane foam.

By only selecting a portion of the language from the preamble related to the determination of GACT for methylene chloride usage as an ABA at slabstock facilities and presenting it out of context, the commenter has misrepresented EPA's rationale in the proposal preamble. The entire discussion, from which the commenter quoted selectively, is as follows:

> The NESHAP requirements, along with the revisions to the Occupational Safety and Health Administration (OSHA) permissible exposure and short-term exposure limits for methylene chloride (63 FR 50711, September 22, 1998), caused slabstock foam facilities to investigate, evaluate, and install technologies to reduce or eliminate the use of methylene chloride as an ABA at their facilities. These technologies include alternative formulations to reduce the amount of methylene chloride ABA needed, alternative non-HAP ABAs (acetone, liquid carbon dioxide), controlled or variable pressure foaming, and forced cooling. Based on recent contacts with the industry, we have verified that every known slabstock facility has converted their process to utilize one of these technologies * * *. Consequently, we propose to conclude that emissions limitations based on the application of these technologies are generally available (GACT) for new and existing sources.

See 72 FR 16649, April 4, 2007.

As explained in the proposal, we determined that some of the technologies listed could result in the complete elimination of the use of methylene chloride as an ABA. However, we also discussed alternative formulations that reduce, but do not eliminate, the amount of methylene chloride ABA needed in the list of generally available control measures. Alternative formulations can include, among other things, chemical additives and alternative polyols. These measures ''reduce'' the use of methylene chloride as an ABA without eliminating it. In fact, a specific relevant example of these technologies was provided by a slabstock flexible polyurethane foam production facility that commented on the proposal. This commenter reports that their facility has reduced methylene chloride emissions by 77 percent through the reformulation of foam grades and marketing to encourage customers to switch to foam grades that the commenter's company can produce without methylene chloride. This is a clear example of the ''alternative formulations'' referred to in the proposal preamble as one of the technologies we determined to be GACT. Therefore, we reject the commenter's assertion that we concluded that GACT was a ban on the use of methylene chloride as an ABA and did not make any revisions in the final rule as a result of this comment.

Comment: One commenter opposed the proposal to prohibit all use of methylene chloride-based adhesives. The commenter stated that there may be certain applications where adhesives based on methylene chloride provide superior performance and can be used in compliance with Occupational Safety and Health Administration (OSHA) worker exposure limits. The commenter only mentions loop slitter operations.

Response: In our proposal, we specifically requested comments on ''whether and under what circumstances methylene-chloride based adhesives (*e.g.*, in small specialty applications) *are being used or might be used* by the foam fabrication industry, and what quantities are or might be involved in such applications'' (72 FR 16649) (*emphasis added*). The commenter's general assertion that there may be applications where methylene chloride-based adhesives provide superior performance is not responsive to our request for comments. As for loop slitters, we found at proposal that the industry has discontinued the use of methylene chloride-based adhesives, and we concluded at proposal that GACT was the prohibition of the use of such adhesives for loop slitter operations. At this time, we are not aware of any specific applications where methylene chloride adhesives provide performance that cannot be achieved by alternative adhesives and where they can be used in compliance with OSHA worker exposure limits. Consequently, the final rule retains the prohibition of the use of methylene chloride adhesives in flexible polyurethane foam fabrication operations.

Comment: One commenter indicated that a less burdensome program should be provided for flexible polyurethane foam producers that utilize methylene chloride as an ABA. This commenter's company is a small business that employs less than 100 people. They operate one facility that produces and fabricates flexible polyurethane foam. The commenter pointed out that their facility produces thousands of pounds of flexible polyurethane foam per month, while typical facilities throughout the country produce millions of pounds per month.

The commenter provided information on the numerous improvements that have been made at this facility to reduce methylene chloride usage and emissions. They have eliminated all uses of methylene chloride except as an ABA, and have made significant reductions (over 75 percent) in its usage as an ABA.

The commenter indicated that this facility has a federally enforceable synthetic minor permit which caps methylene chloride emissions on a monthly and 12-month rolling basis. The permit also incorporates many of the monitoring and recordkeeping requirements of the foam production MACT rule.

The commenter suggested that, for this facility, the proposed rule is unnecessarily complicated in view of the environmental benefits realized by the programs already in place. The commenter suggested several amendments to the rule to reduce the burden. In general, the commenter requested that the methylene chloride ABA emissions caps and the monitoring and reporting provisions in their permit be provided as an acceptable option for meeting the requirements of the area source rule for slabstock foam production.

The commenter cited numerous areas where capital expenditures would be necessary to comply with the proposed rule including the purchase of control equipment (storage tank vapor balance line), computer software, IFD and density testing equipment, and meter calibration equipment. The commenter

noted that the initial investment would also include costs for computer program development and operator training. The commenter estimated that the total initial capital costs would range from $25,000 to $35,000. The commenter also stated that the proposed rule would result in increased annual costs of between $28,000 and $45,000 for testing, training, calibrations, maintenance, tracking, recordkeeping and data entry, and reporting.

Response: The proposed rule included an emissions limitation format for the use of methylene chloride as an ABA, along with associated monitoring, recordkeeping, and reporting provisions, that allows flexibility in how sources choose to comply (for example, individual emissions point requirements versus a source-wide overall limit, monthly compliance versus 12-month rolling average). We believe that this flexibility outweighs any perceived complexity of the format of the emissions limitation and the monitoring and recordkeeping requirements, and we do not believe that the costs of these requirements are inappropriate for this category. Therefore, we did not make any changes to the proposed rule in response to these comments.

Comment: This same commenter stated that the compliance date of the proposed rule for slabstock flexible polyurethane foam production sources (the date of publication of the final rule) is not reasonable since the final rule will result in the need for equipment, operating, monitoring, and administrative changes.

Response: The commenter cited numerous areas where capital expenditures would be necessary to comply with the proposed rule including the purchase of control equipment (storage tank vapor balance line), computer software, IFD and density testing equipment, and meter calibration equipment. The commenter also indicated that computer program development will be necessary and operators will need to be trained. Given the changes that will be necessary to comply with the final rule, we agree that it is reasonable to extend the compliance date for existing sources. Therefore, the final rule has a compliance date for slabstock foam affected sources electing to continue to utilize methylene chloride as an ABA to 1 year from the date of publication of the final rule.

Comment: One commenter did not understand how facilities that do not release a HAP, specifically methylene chloride, could be subject to the NESHAP for flexible polyurethane foam production and fabrication. In support, the commenter recited the definition of an area source as ''any stationary source of hazardous air pollutants that is not a major source * * *.'' The commenter believed the proposed rule conflicts with the definition of an area source because the proposed NESHAP has specific requirements for facilities that do not release any HAP. The commenter asked how this is possible.

Response: The first paragraph of the proposed rule, § 63.11414(a), states ''You are subject to this subpart if you own or operate an area source of hazardous air pollutant (HAP) emissions that meets the criteria in paragraph (a)(1) or (2) of this section.'' Facilities that are not sources of any hazardous air pollutants, including methylene chloride, are not subject to the rule. Therefore, the comment that ''the proposed NESHAP has specific requirements for facilities that do not release any HAP'' is incorrect.

F. Proposed NESHAP for Lead Acid Battery Manufacturing Area Sources

Comment: One commenter stated that EPA's proposed GACT determination for battery manufacturers does not satisfy section 112(d)(5). The commenter claimed that rather than evaluating the potential reduction measures that are commercially available and appropriate for application by battery manufacturers, EPA considered only one option: requiring all sources to comply with the 1982 NSPS for PM, with which 53 out of 58 sources are already in compliance anyway. The commenter stated that section 112(d)(5) requires the use of ''methods, practices and techniques'' which are commercially available and appropriate for application by the sources in the category considering economic impacts.'' The commenter said that there are ''methods, practices, and techniques'' that are commercially available and appropriate for application by battery manufacturers. The commenter specifically cited a 1998 EPA report that specifies a 2:1 air to cloth ratio as the ''[g]enerally safe design level'' for lead oxide in ordinary baghouses. With respect to processes currently controlled with fabric filters, the commenter stated that there are more effective fabric filters, and with respect to processes currently controlled by impingement scrubbers, there are fabric filters or more effective scrubbers (*e.g.* venturi scrubbers). According to the commenter, EPA has not required GACT standards that reflect the use of these technologies, nor even considered doing so. The commenter concluded that EPA's rule contravenes section 112(d)(5).

The commenter also stated that EPA's rule is arbitrary and that EPA provided no rationale for failing to consider methods, practices and techniques that are commercially available and would reduce battery manufacturers' emissions significantly. The commenter stated that EPA does not claim that more efficient control measures are not commercially available for any of the relevant processes, nor does the Agency claim that they are too costly. In particular, according to the commenter, EPA does not even say what the cost for more efficient technologies would be or why it thinks they might be too costly. The commenter stated that EPA failed to consider any approach other than using the 1982 NSPS without providing any explanation for its choice. The commenter stated that it appears EPA's only consideration was whether the 1982 NSPS might be too stringent to be GACT, and EPA did not entertain the possibility that more protective standards might be achievable through the use of generally available measures. According to the commenter, EPA's rule is not only arbitrary but unlawful in that it reflects a complete abrogation of the EPA's statutory duty to evaluate currently available control measures and set standards that reflect them.

Response: Section 112(d)(5) authorizes the Administrator to ''elect to promulgate standards or requirements applicable to sources in such [area source] categories or subcategories which provide for the use of generally available control technologies or management practices [GACT] by such sources to reduce emissions of hazardous air pollutants.'' As we discussed earlier, in determining GACT for area sources, we examine the demonstrated and generally available controls at area sources in the source category. See 72 FR 16638, April 4, 2007. We also consider the standards applicable to major sources in the category and determine if those controls are generally available and transferable to area sources. See 72 FR 16638, April 4, 2007. In addition, in appropriate circumstances, we may consider technologies employed by sources in similar industrial categories. See 72 FR 16638, April 4, 2007. We also consider cost and economic impacts of generally available control technologies or management practices on a source category in determining GACT. See 72 FR 16638, April 4, 2007.

For the lead acid battery area sources, at proposal, we considered the controls and technologies employed by the area sources in the category. We found that

the smallest sources in this category were not subject to the lead acid battery NSPS. We also found that there are approximately 60 known area sources in this category and no known major sources. We concluded that the requirements of the NSPS represented generally available control technologies or management practices for this source category. Moreover, although not stated in the proposal, because of the large number of area sources in this category, we concluded that we did not need to look at sources in similar industrial categories for determining what is generally available to the lead acid battery manufacturing category.

At proposal, we found that the NSPS addressed lead (not PM) emissions from six types of processes at lead acid battery manufacturing plants: (1) Grid casting, (2) paste mixing, (3) three-process operations, (4) lead oxide manufacturing, (5) lead reclamation, and (6) other lead emitting processes. The commenter stated that more effective ''methods, practices, and techniques'' including fabric filters with air to cloth ratios between 2:1 and 3.5:1 (and specifically 2:1 for lead oxide) are available, and cited this as evidence that significant advancements in technology have occurred since the NSPS was promulgated in 1982. The 1998 EPA report that the commenter cited indicates that the generally safe design level for lead oxide in ordinary baghouses is, in fact, the same 2:1 air to cloth ratio required in the NSPS standard for lead oxide manufacturing, which is incorporated into this rule. Thus, contrary to the commenter's assertion, the emission limitations in the NSPS were in this case based on the specific technology addressed by the commenter and that technology is considered state-of-the-art today.

The commenter assumed that the category's current lead emissions reflect a 98 percent reduction from uncontrolled emissions, and suggested that substantial emissions reductions would be obtained through setting new standards that reflect a 99.9 percent reduction. We are unsure on what the commenter based this assertion. For fabric filters with a 6:1 air to cloth ratio in the NSPS, which is the control basis for the standards for paste mixing, three-process operations, and other lead emitting processes in this rule, we attributed 99 percent lead emissions reduction. We attributed a 90 percent lead removal efficiency for impingement scrubbers, the control basis for the standards for the grid casting and lead reclamation processes. Therefore, while there would be an incremental reduction in emissions if technologies that achieve 99.9 percent lead emission reduction were required by this area source NESHAP, the reductions would not be as substantial as predicted by the commenter.

We did not discuss the costs of imposing additional control requirements on this category at proposal, but we do so here in response to this comment. We estimate that the total capital investment for a typical plant to upgrade to 99.9 percent controls could range from more than $600,000 to almost $1.7 million, depending on the technologies selected. We estimate annual costs of this additional control for a typical plant would be around $1.2 million per year due to increased operator labor costs, maintenance labor and material costs, electricity and other utility costs, taxes and insurance, and capital recovery costs. This cost represents almost 5 percent of the total shipments for an average lead acid battery establishment. We do not believe that these costs and potential economic impacts are appropriate for application by the area sources in this category. The costs incurred per ton of lead emissions reduced would be around $450,000 to $500,000 based on replacing existing control devices or installing additional devices to increase control efficiency up to 99.9 percent.

In conclusion, we believe that the technologies upon which the proposed standards were based are generally available to this industry. Moreover, we believe that the costs of requiring every area source lead acid battery facility to install technologies that achieve additional incremental emission reductions, beyond those established in these NESHAP, would be prohibitive. Thus, we have not revised the emission standards in the rule in response to this comment.

Comment: One commenter stated that in addition to emitting more than 26 tpy of lead, lead acid battery manufacturers emit more than 47 tpy of other HAP; among these are HAP that are not metals, do not behave like PM in the stack gas, and therefore cannot be captured or reduced through the use of PM control devices. According to the commenter, section 112(d) requires emission standards for each HAP listed in section 112(b). Assuming that the Agency does not have to set separate standards for each HAP when issuing standards under section 112(d)(5), the commenter stated that EPA still has an obligation to address all of the HAP that a category emits when setting GACT standards. The commenter claimed that EPA has an obligation to address the HAP emitted by battery manufacturing plants that are not captured by PM control devices, and the failure to do so was unlawful. The commenter also stated that the failure to consider the HAP that are not emitted as PM and to explain why they were not addressed is arbitrary and capricious.

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

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

Thus, section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 Urban HAP are subject to regulation.

Section 112(d)(1) requires the Administrator to promulgate regulations establishing emissions standards for each area source of HAP listed for regulation pursuant to section 112(c). EPA identified the 30 Urban HAP that pose the greatest threat to public health in the Integrated Urban Air Toxics Strategy. In that same document, EPA listed the source categories that account for 90 percent of the Urban HAP emissions.

We have interpreted the above provisions of section 112 to require EPA to regulate only those Urban HAP emissions for which an area source category is listed pursuant to section 112(c)(3). As stated elsewhere in this preamble, Congress chose to treat areas sources differently from major sources under section 112 and other sections of the CAA, such as title V. Under section 112, Congress determined that the Agency should identify 30 HAP emitted from area sources that posed the greatest threat to public health in the largest number of urban areas. The statute then directs the Agency to list sufficient area source categories to account for 90 percent of the emissions of each Urban HAP and to subject those listed source categories to regulation. Section 112(d)(1) requires emissions standards for area sources of HAP ''listed pursuant to subsection (c)''. Area sources listed pursuant to subsection (c)(3) are listed

only because they emit one of the 30 listed Urban HAP and the Agency has identified the category as one that will ensure that we satisfy the requirement to subject area sources representing 90 percent of the area source emissions of the 30 Urban HAP to regulation.

Moreover, section 112(c)(3) explicitly refers to section 112(k)(3)(B). Section 112(k)(3)(B) addresses the national strategy to control HAP from area sources in urban areas. The focus of the strategy is on the 30 HAP that pose the greatest threat to public health in the largest number of urban areas. As noted above, in 1999, EPA issued the Integrated Air Toxics Strategy in response to section 112(k)(3)(B). In that strategy, we identified the 30 Urban HAP, which are the HAP that pose the greatest threat to public health in the largest number of urban areas, and we identified, consistent with section 112(c)(3), the area source categories that account for 90 percent of those Urban HAP.

Pursuant to sections 112(c)(3) and 112(k)(3)(B), the Lead Acid Battery Manufacturing area source category was listed due to emissions of two specific pollutants: lead and cadmium. We recognize that other HAP, including Urban HAP which did not form the basis of the section 112(c)(3) listing decision, may be emitted from lead acid battery manufacturing facilities. To the extent that the other HAP are Urban HAP, we identified other area source categories that emit those Urban HAP in higher amounts and have determined that subjecting other area source categories to regulation for these HAP will achieve the 90 percent requirement in the CAA. In conclusion, consistent with section 112, we are not obligated to address HAP other than Urban HAP for which this area source category was listed pursuant to section 112(c)(3), which, as noted above, are lead and cadmium.

Comment: One commenter requested clarification of the dates for compliance compared to the key NESHAP General Provisions for existing sources. The commenter explained that in § 63.9(b) of the General Provisions and based on communications with EPA, initial notification by existing facilities is due 120 calendar days after final rule publication. According to the commenter, the proposed compliance date provision in § 63.11422 could be read to suggest notification is not due for a year. The commenter found similar confusion between § 63.9(h) and § 63.11422 pertaining to notices of compliance from existing sources. The commenter suggested the following clarification language:

Note: Initial notification by existing facilities, required by § 63.9(b), is due within 120 calendar days after the date of publication of the final rule in the **Federal Register**. Notices of compliance by existing facilities, required by § 63.9(h), is due on the 60th day following the 1 year deadline for compliance with the new standard.

Response: We agree that the timing for notifications should be clarified, and we have made the suggested clarifications in the final rule.

G. Proposed NESHAP for Wood Preserving Area Sources

Comment: Eight commenters questioned the need for the standards and stated there is no need to regulate wood preserving area sources. The commenters further stated that the wood preserving industry is an insignificant source of the four HAP to be regulated by this proposed standard. According to the commenters, the industry has not used methylene chloride in the wood treating process since 1992, and emissions of the three other HAP covered in this rule are negligible according to the commenters. Moreover, the commenters claimed that EPA was unable to identify ''any other management practices or control technologies that would provide additional emissions reductions in a cost effective manner.''

Response: The emission levels used for the Integrated Urban Air Toxics Strategy were based on the section 112(k) 1990 inventory. Following issuance of the Integrated Urban Air Toxics Strategy in 1999, EPA revised the area source category listing in the Strategy to also include the wood preserving area source category (67 FR 70428, November 22, 2002). We also recognize that the wood preserving industry has changed over the past 15 years and Urban HAP emissions have been reduced. The regulations being finalized today will ensure that future emissions from wood preserving operations will be limited to the same level that is being generally achieved today and was determined to be GACT. Without such regulations, there is nothing that would limit future Urban HAP emissions from a new process or wood preservative.

Comment: Eight commenters requested clarification regarding non-applicable preservative chemistries. The commenters asserted that as currently worded, the provision in § 63.11428(a) would seem to encompass any wood preserving operation, including those that treat household commodities with ammoniacal copper quat (ACQ) or copper azole (CA)—waterborne, copper-based preservatives that do not contain chromium, arsenic, dioxins, or methylene chloride. The commenters understood that EPA did not intend to regulate wood preservatives that do not contain the Urban HAPs for which the wood preserving category was listed. Accordingly, the commenters requested that EPA revise § 63.11428(a) to clarify, as it does in § 63.11430 and in the preamble to the proposed rule, that the wood preserving area source standard applies only to facilities ''using a treatment process with any wood preservatives containing chromium, arsenic, dioxins, or methylene chloride.''

Response: The applicability of the wood preserving area source rule (as described in § 63.11428(a)) includes any wood preserving operation located at an area source. However, only those facilities that are using a wood preservative containing chromium, arsenic, dioxins, or methylene chloride are subject to the management practice requirements in § 63.11430 and the other requirements in § 63.11432. Additional language was added to § 63.11430(c) and § 63.11432 to clarify that only those area source facilities using any wood preservative containing chromium, arsenic, dioxins, or methylene chloride have to prepare and operate according to a management practice plan to minimize air emissions, and comply with the initial notification and reporting requirements. If your area source wood preserving facility is only using preservatives such as ACQ or CA, then you are not subject to the requirements in §§ 63.11430 and 63.11432.

Comment: Several commenters requested that EPA provide flexibility in the interpretation of the term ''fully drain'' as that term is used in § 63.11430(c)(6): ''For the pressure treatment process, fully drain the retort prior to opening the retort door.'' The commenters stated that as a practical matter, it is not possible to ''fully drain'' 100 percent of all residual preservative before a retort door is opened and that the quantity of material involved is small. The commenters requested confirmation that the trace amount of residual preservative which may remain in the cylinder when the retort door is opened does not violate the § 63.11430(c)(6) requirement to ''fully drain'' the retort before opening the door, and that the language in § 63.11430(c)(6) be amended to read ''For the pressure treatment process, fully drain the retort to the extent practical, prior to opening the retort door.''

Response: We agree with the commenters and have made the

following change to § 63.11430(c)(6) in the final standards: ''For the pressure treatment process, fully drain the retort to the extent practicable, prior to opening the retort door.'' An example of what is practicable for fully draining the retort would be a retort operation where any residual preservative drips into the door pit sump.

H. Proposed Exemption of Certain Area Source Categories from Title V Permitting Requirements

Comment: One commenter believed that EPA's proposal to exempt four of the five area source categories addressed in its proposal (acrylic and modacrylic fibers production, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving) from title V permitting requirements is unlawful and arbitrary. In support of this assertion, the commenter cited CAA section 502(a), which provides that EPA may exempt area source categories from title V permitting requirements if compliance with such requirements is ''impracticable, infeasible or unnecessarily burdensome.'' See 42 U.S.C. 7661a(a). The commenter stated that EPA does not claim that such requirements are impracticable or infeasible for any of the four area source categories it proposes to exempt, but rather relies entirely on its claim that they would be ''unnecessarily burdensome.''

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

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

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

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are ''impracticable, infeasible *or* unnecessarily burdensome.'' See CAA section 502 (*emphasis added*). If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word ''and,'' in place of ''or''.

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

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

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

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

The commenter asserts that ''EPA must show * * * that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the April 6, 2007 proposed rule for the categories at issue in this rule. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the source categories for which we proposed title V exemptions. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule,

we would have stated so in the April 6, 2007 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking.[11]

Moreover, even were the comment framed as a request to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502, which it is not, we would deny such request because we have a court-ordered deadline to complete this rulemaking by June 15, 2007, and we are not in a position to expand the scope of the rulemaking at this juncture. In any event, we believe that the commenter's position that ''EPA must show * * * that the ''burden'' of compliance is *unnecessary*'' is unreasonable and contrary to Congressional intent concerning the applicability of title V to area sources. Congress intended to treat area sources differently under title V as it expressly authorized the EPA Administrator to exempt such sources from the requirements of title V at his discretion. There are several instances throughout the CAA where Congress chose to treat major sources differently than non-major sources, as it did in section 502.[12] In addition, it is worth noting that although the commenter espouses a new interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' for an area source category, the commenter does not explain why EPA's interpretation of the term ''unnecessarily burdensome'' is arbitrary, capricious or otherwise not in accordance with law. We maintain that our interpretation of the term ''unnecessarily burdensome'' in section 502, as set forth in the Exemption Rule, is reasonable.

Finally, in this rule, we appropriately applied the four-factor balancing test set forth in the Exemption Rule to the particular area source categories at issue in this rule. In response to comments, we provide above a more detailed discussion of our consideration of the four factors for the source categories at issue. Based on our consideration of the four factors, we are taking final action to finalize the exemptions from title V for the acrylic and modacrylic fibers production, flexible polyurethane foam production and fabrication, lead acid battery manufacturing, and wood preserving categories.[13]

Comment: One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level. The commenter stated that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that likewise, it is difficult or impossible for citizens to bring enforcement actions. The commenter continued that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt *without* title V permits. The commenter also said that likewise, EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claimed that to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt. The commenter concluded that EPA does not *acknowledge* these benefits or explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response: Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with *substantial evidence* that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the source categories at issue here, which is the sole title V issue in this rulemaking, the comments provide no basis for the Agency to reconsider its proposal to exempt the area source categories from title V. Today, we finalize the

[11] If the commenter objected to our interpretation of the term ''unnecessarily burdensome'' in the Exemption Rule, it should have commented on, and challenged, that rule. Any challenge to the Exemption Rule is now time barred by CAA section 307(b). Although we received comments on the title V Exemption Rule during the rulemaking process, no one sought judicial review of that rule.

[12] See, *e.g.*, section 112(d)(5) (authorizing generally available control technologies or management practices in lieu of maximum achievable control technology standards for area sources); section 112(f)(5) (exempting area sources regulated under section 112(d)(5) from the 8-year residual risk review requirement); Compare, section 110(a)(2)(c) (requiring minor source permitting program without a detailed statutory structure) with section 165 (providing detailed permitting requirements for major sources locating in prevention of significant deterioration areas).

[13] In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 72 FR 15254–15255, March 25, 2005. As shown above, after conducting the four-factor balancing test and determining that title V requirements would be unnecessarily burdensome on the area source categories at issue here, we examined whether the exemption from title V would adversely affect public health, welfare and the environment, and found that it would not.

exemptions proposed in the April 6, 2007 rule.

Moreover, as explained in the proposal and above, we considered implementation and enforcement issues in the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. See 70 FR 75326. In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to ensure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. Nowhere in the Exemption Rule did the Agency state that we had to demonstrate that citizen enforcement would be identical absent title V before an area source category could be exempted from title V.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. We do not have enforcement data available because we are only today finalizing the NESHAP at issue here. As stated in the proposal, however, States with delegated programs have enforcement and compliance assistance and implementation programs in place to enforce the provisions of these NESHAP. See 72 FR 16656. In fact, a State must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, subpart E. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to enforce the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under these NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of these NESHAP. Furthermore, the fourth factor is one factor that we evaluated. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemptions for the area source categories at issue in this rule.

Comment: One commenter explained that title V provides important monitoring benefits and stated that EPA admits that ''[o]ne way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to *assure* compliance with emission limitations and control technology requirements imposed in the standard'' (72 FR 16654). According to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for each category. The commenter said that with respect to acrylic and modacrylic fibers production, EPA states ''[b]ecause both the continuous and noncontinuous monitoring methods required by the proposed NESHAP would provide periodic monitoring, title V would not add any monitoring to the proposed NESHAP.'' Id. The commenter stated that EPA makes a similar claim with respect to lead acid battery manufacturing (72 FR 16655), and that such claims miss the point. As EPA admits, according to the commenter, title V does not merely require periodic monitoring; it requires monitoring to ''assure compliance.'' The commenter continued by stating that if additional monitoring is necessary to assure compliance, it must be required to satisfy title V, regardless of whether the underlying NESHAP provides for periodic monitoring. The commenter concludes that the ''burden'' imposed on a category by title V is not unnecessary unless EPA shows that, in all instances, the periodic monitoring requirements established in the underlying NESHAP for that category ''assure'' compliance. According to the commenter, EPA does not even claim—far less demonstrate with substantial evidence—that the monitoring requirements in the NESHAP for any of the categories it proposes to exempt ''assure'' compliance. The commenter stated that for this reason as well, its claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and its exemption is unlawful and arbitrary and capricious.

Response: The commenter asserts that ''EPA admits [that] title V does not merely require periodic monitoring; it requires monitoring to ''assure compliance.'' The commenter does not accurately characterize the Agency's statements in the proposal. We stated:

> One way that title V may improve compliance is by requiring monitoring (including recordkeeping designed to serve as monitoring) to assure compliance with the emissions limitations and control technology requirements imposed in the standard. The authority for adding new monitoring in the permit is in the *''periodic monitoring'' provisions of 40 CFR 70.6(a)(3)(i)(B) and 40 CFR 71.6(a)(3)(i)(B), which allow new monitoring to be added to the permit when the underlying standard does not already require ''periodic testing or instrumental or noninstrumental monitoring* (which may consist of recordkeeping designed to serve as monitoring).''

See 72 FR 16654 (*emphasis added*).

We nowhere state or imply that periodic monitoring is not sufficient to assure compliance. Moreover, the commenter's position that the Agency must make a specific finding that the monitoring in the proposed NESHAP assures compliance with the NESHAP is inconsistent with EPA's Final Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs (71 FR 75422, December 15, 2006) (''Interpretive Rule''). That rule interprets title V of the Clean Air Act and its implementing regulations at 40 CFR 70.6(c)(1) and 71.6(c)(1) and the Clean Air Act requirements which they implement. Under the Interpretive Rule, if an applicable requirement, such as a NESHAP, contains periodic testing or instrumental or noninstrumental monitoring (*i.e.*, periodic monitoring), permitting authorities are not authorized to assess the sufficiency of or impose new monitoring requirements on a case-by-case basis. Federal standards promulgated pursuant to the 1990 Clean Air Act Amendments are presumed to obtain monitoring sufficient to assure compliance. Thus, consistent with this interpretation and as demonstrated in the proposed rule and above, title V would not add any monitoring requirements to the NESHAP because the NESHAP contains periodic monitoring.

The commenter also attempts to create a new test for consideration in determining what is ''unnecessarily

burdensome'' under CAA section 502. Specifically, the commenter argues that EPA must demonstrate with substantial evidence that, in all instances, the periodic monitoring requirements assure compliance. As explained above, this rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. For all the reasons explained above, we reject the commenter's attempt to create a new test for determining whether title V is unnecessarily burdensome on an area source category. Moreover, EPA considered monitoring in the first factor of the four-factor balancing test that it developed in the Exemption Rule. EPA appropriately applied that factor to the area source categories at issue in this rule.

As noted above, under the first factor, EPA considers whether title V would result in significant improvements to the compliance requirements that are proposed for the area source categories. See 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. See 70 FR 75323. As noted above, and in the proposed rule, we considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not.

Specifically, EPA included in the NESHAP periodic monitoring it determined to be necessary to assure compliance. See 72 FR 16654–16655. In addition, for the Acrylic and Modacrylic Fibers Production area source category, the Lead Acid Battery Manufacturing area source category, the Flexible Polyurethane Foam Production area source category, and the Flexible Polyurethane Fabrication area source category, EPA found that title V would not add additional monitoring, and that determination is consistent with the title V Interpretive rule. See 72 FR 16654–16655. The commenter does not provide any evidence to support a claim that title V would add monitoring, consistent with our interpretation of title V in the Interpretive Rule, for any of these area source categories. For the Wood Preserving area source category, we imposed recordkeeping to serve as monitoring that was designed to document compliance with the management practices imposed on the industry. See 72 FR 16655. We concluded that title V would not add additional monitoring for this category because continuous monitoring is not necessary to ensure a reduction in HAP emissions for this category. We also concluded that the recordkeeping and reporting requirements in the rule are sufficient to assure compliance and that additional monitoring is not practical or necessary. The commenter did not take issue in its comment with the adequacy of the recordkeeping that serves as monitoring or the reporting requirements for the Wood Preserving area source category.

For the reasons described above, the first factor supports an exemption, and even if it did not, the four-factor balancing test requires EPA to examine the factors, in combination, and determine whether the factors, viewed together, weigh in favor of exemption. See 70 FR 75326. As explained above, we determined that the factors, weighed together, supported exemption of the area source categories from title V.

Comment: One commenter argued that title V provides important reporting certification benefits and that, specifically, plants must report deviations from emission standards and must certify at least annually whether they are in compliance with ''any applicable requirements.'' See 42 U.S.C. 7661b(b)(2). The commenter stated that EPA fails to point to any requirement in the NESHAP for any of the categories it proposes to exempt that requires plants to report each deviation from requirements, as title V does. The commenter disagrees with EPA that reporting requirements for certain operating requirements, such as the daily average water flow to a wet scrubber, are sufficient and states that none of the NESHAP contain certification requirements. The commenter also stated that the compliance certification requirement obliges plant operators to certify—subject to criminal penalties—whether their sources were in or out of compliance with emission standards. According to the commenter, Congress determined that this requirement was necessary *in addition* to reporting requirements, and that is why it enacted the compliance certification requirement. The commenter stated that it is not up to EPA to declare that it disagrees with Congress and find that compliance certification requirements are not necessary. The commenter acknowledged that it might be possible for EPA to show that compliance certification requirements are not necessary for some specific area source category based on that specific category's characteristics. The commenter said that EPA has not done that here, however, and instead offers the generic claim that it thinks quarterly reports are enough. Thus, the commenter believes that EPA has essentially taken the position that compliance certification is never necessary. The commenter also stated that EPA contravenes the CAA by excusing sources from a compliance obligation without meeting the requirement of showing that requirement to be unnecessary. Further, according to the commenter, EPA acts arbitrarily by finding the compliance certification is unnecessary without providing a rational basis for that claim. The commenter concluded that the recording requirements that exist under the individual NESHAP are no replacement for the recording requirements under title V, which require prompt reporting of all ''deviations'' from any applicable requirements, not just reporting of exceedances of EPA-selected operating requirements. According to the commenter, because EPA has not shown that reporting of selected operating requirements renders reporting of all deviations from any applicable requirements unnecessary, the EPA's exemptions are unlawful and arbitrary.

Response: In this comment, the commenter again argues that EPA must specifically demonstrate that all title V requirements, deviation reporting and annual compliance certifications in this instance, are unnecessary in isolation before EPA can lawfully exempt an area source category from title V. We do not agree. As explained above, we interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed the four-factor balancing test in the Exemption Rule, and that balancing test does not require a determination that every title V requirement is unnecessary. Instead, in the first factor we consider ''whether title V would result in significant improvements to the compliance requirement, including monitoring, recordkeeping, and reporting.'' As explained in the proposal preamble and noted above, we have determined that for these source categories title V would not result in significant improvements in compliance requirements.

The commenter argued that these NESHAP do not contain adequate deviation reporting requirements because the deviation reporting is limited to reporting on exceedances or variances of the operating requirements set forth in the standards. We are not clear what aspects of the deviation reporting contained in the NESHAP the commenter considers insufficient or what additional deviation reporting the commenter believes would be included

if title V applied. The proposed NESHAP contain deviation reporting requirements for each of the source categories that we are exempting from title V. In response to this comment, the Agency has re-evaluated the deviation requirements for these NESHAP and determined that any additional, unspecified, deviation reporting that title V might add would not lead to significant improvements in the compliance requirements finalized in this rulemaking.

The commenter also takes issue with EPA's conclusion that annual compliance certifications are not necessary for certain categories because of quarterly reporting requirements. The commenter implies that enforcement of the NESHAP is undermined without an annual compliance certification and states that EPA admitted that there are no certification requirements in the NESHAP. First, even absent the requirement to submit annual compliance certifications under the NESHAP, sources must nevertheless comply with all emission standards and requirements in the NESHAP. In addition, the Agency did not conclude that annual compliance certification is never necessary, but only that the annual compliance certification would not lead to significant improvements in the compliance requirements in the NESHAP because some of the NESHAP require quarterly reports. Furthermore, contrary to what the commenter states, and as discussed above in section IV of this preamble, there are certification requirements contained in the NESHAP (*e.g.*, initial certification of compliance status).

Moreover, we determined in our consideration of the fourth factor that there are adequate enforcement and implementation programs in place to assure compliance with the NESHAP and the commenter has provided no evidence that the lack of annual compliance certifications will undermine enforcement and implementation of the NESHAP.

Comment: One commenter believed EPA argued that its own belief that title V is a ''significant burden'' on area sources further justifies its exemption (72 FR 16655–16656). According to the commenter, regardless of whether EPA regards the burden as ''significant,'' the Agency may not exempt a category from compliance with title V requirements unless compliance is ''unnecessarily burdensome.'' The commenter stated that in any event, EPA's claims about the alleged significance of the burden of compliance is entirely conclusory and could be applied equally to any major or area source category. The commenter also stated that the Agency does not show that the compliance burden is especially great for any of the sources it proposes to exempt, and thus does not demonstrate that the alleged burden necessitates treating them differently from other categories by exempting them from compliance with title V requirements.

Response: The commenter appears to take issue with the formulation of the second factor of the four-factor balancing test. Specifically, the commenter states that EPA must determine that title V compliance is ''unnecessarily burdensome'' and not a ''significant burden'' as expressed in the second factor of the four factor balancing test. We note that the commenter in other parts of its comments on the title V exemptions argues that EPA must demonstrate that every title V requirement is ''unnecessary'' for a particular source category before an exemption can be granted but makes no mention of the ''burden'' of those requirements on area sources, but here the commenter argues that ''significant burden'' is not appropriate for the second factor. Notwithstanding the commenter's inconsistency, as explained above, the four-factor balancing test was established in the Exemption Rule and we did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in this rule.

Contrary to the commenter's assertions, we properly analyzed the second factor of the four-factor balancing test. See 70 FR 75320. Under that factor, EPA considers whether title V permitting would impose a significant burden on the area source categories and whether the burden would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies. See 70 FR 75324. The commenter appears to assert that the second factor *must* be satisfied for EPA to exempt an area source category from title V, but, as explained above, the four factors are considered in combination. We have concluded that the second factor, in combination with the other factors, supports an exemption for the area source categories at issue.

Comment: According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (72 FR 16656). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to any of the categories it proposes to exempt—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V but not in these NESHAP would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response: The commenter mischaracterizes the first and third factors of the four-factor balancing test and takes out of context certain statements in the proposed rule concerning those factors.

First, the commenter incorrectly characterizes our statements in the proposed rule in applying the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination.

Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In considering the third factor, we stated that, ''[b]ased on our consideration of factor 1 (described above) and factor 4 (described below), *we did not identify potential gains in compliance from title V permitting.* Therefore, we conclude that the costs of title V permitting for these area source categories are not justified.'' (72 FR 16656) (*emphasis added*).

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

improvements in compliance requirements.

EPA applied the four-factor balancing test in determining whether title V was unnecessarily burdensome on the area source categories we are exempting from title V in this rule. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the source categories at issue here, which is the sole title V issue in this rulemaking, the comments provide no basis for the Agency to reconsider its proposal to exempt the area source categories from title V. Furthermore, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts.

Comment: According to one commenter, EPA argued that alternative State implementation and enforcement programs assure compliance with the underlying NESHAP without relying on title V permits (72 FR 16656). The commenter stated that again, however, EPA's claim is entirely conclusory and generic. The commenter also stated that the Agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAPs—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary. Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter said that absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, however, the Agency's argument boils down to the claim that it generally views title V requirements as unnecessary. The commenter stated that may be EPA's view, but it was not Congress's view when Congress enacted title V and it does not suffice to show that title V compliance is unnecessarily burdensome.

Response: The commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. As explained in the proposal preamble and above, we considered the fourth factor and determined that there are adequate implementation and enforcement programs in place to assure compliance with the CAA, consistent with the fourth factor. As stated above, we do not have data available on the enforcement of these NESHAPs as in the Exemption Rule because, unlike in that rule, we are exempting the categories at the same time we are promulgating these NESHAPs. In the proposed rule, we did, however, explain that States with delegated programs have enforcement and compliance assistance programs in place to enforce the provisions of these NESHAPs (72 FR 16656). In addition, States must have adequate programs to enforce the HAP regulations and provide assurances that it will enforce all NESHAPs before EPA will delegate a program to the States. See 40 CFR part 63, subpart E. The commenter argues that the exemptions must fail because ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary'' (*emphasis added*). The standard that the commenter proposes is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V is unnecessarily burdensome for the source categories at issue. Furthermore, the standard the commenter suggests is an impossible standard to meet.

Comment: One commenter stated that, as EPA concedes, the legislative history the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. See 72 FR 16654; 16656. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare and the environment. The commenter stated that instead, EPA offered only the conclusory assertion that ''the level of control would remain the same'' whether title V permits are required are not (72 FR 16656). The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons given above, and therefore EPA's claims about public health, welfare and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: to assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA's proposed rule *deprives* the public—would improve compliance with the underlying standards and thus have benefits for public health, welfare and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again simply rests on its own apparent belief that they are never necessary. The commenter concluded that for the reasons given above, that attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response: Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his discretion, the Administrator ''finds that compliance with [title v] is impracticable, infeasible, or unnecessarily burdensome.'' See CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome'', as requiring consideration of the four factors discussed above. EPA applied these four factors to the Acrylic and Modacrylic Fibers Production area source category, the Lead Acid Battery Manufacturing area source category, the Flexible Polyurethane Foam Production and Fabrication area source categories, and the Wood Preserving area source category and concluded that requiring title V for these area source categories would be unnecessarily burdensome.

In addition to determining that title V would be unnecessarily burdensome on the area source categories for which we proposed exemptions, as in the Exemption Rule, EPA also considered, consistent with our interpretation of the legislative history, whether exempting the area source categories would adversely affect public health, welfare or the environment. As explained in the proposal preamble and above, we concluded that exempting the area source categories at issue in this rule would not adversely affect public health, welfare or the environment because the level of control would be the same even if title V applied. The commenter has not provided any information that exemption of these area source categories from title V will adversely affect public health, welfare or the environment.

I. Compliance with Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Comment: One commenter disagreed with EPA's conclusion that this Executive Order does not apply to this action because it is not economically significant and does not present a disproportionate risk to children. According to the commenter, nothing in the language of the Executive Order limits EPA's obligation to consider risks to instances when it thinks the underlying regulatory action is economically significant. The commenter also claimed that the toxic emissions from the source categories included in the proposal have a disproportionate risk on children, who are especially at risk to all toxins and inhaled pollution. The commenter alleged that EPA has ample reason to believe that failing to require the degree of reduction required by the CAA and its exemption of source categories from title V requirements will have a disproportionate effect on children.

Response: We disagree with the commenter. Section 2–202 of Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) defines the actions subject to its terms. As we stated at proposal, this Executive Order 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 disproportionately affect children. If a regulatory action meets both criteria, the Executive Order directs EPA to 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 to those regulatory actions that concern health or safety risks, such that the analysis called for by section 5–501 of the Executive Order has the potential to influence the regulation. These final rules are not subject to Executive Order 13045 because they are not economically significant and, because the rules are based solely on technology performance, an analysis under section 5–501 of the Executive Order would not have had the potential to influence this regulation.

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

Comment: One commenter alleged that minority and low income populations are located disproportionately near the source categories covered by the proposal. According to the commenter, these minority and low income populations will be adversely affected by any standard that is less protective than required by the CAA and also by any exemption from title V permitting requirements. The commenter claimed that EPA failed to consider these effects of its proposal.

Response: As we stated at proposal, we have determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The commenter provided no information to support the commenter's conclusion.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

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

The information collection requirements for acrylic and modacrylic fibers production are the same as the requirements that are in the current State operating permit for the one existing source. The only new information collection requirements that apply to this area source consist of initial notifications, records of process and maintenance wastewater treated in a wastewater treatment systems, and an SSM plan. Any new acrylic and modacrylic fibers production area source is subject to all information collection requirements in the part 63 General Provisions.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 9 labor hours per year at a cost of $780 for the one existing acrylic and modacrylic fibers area source. No capital/startup costs or operation and maintenance costs are associated with the final requirements. No costs or burden hours are estimated for new acrylic and modacrylic fibers production area sources because no new area sources are estimated during the next 3 years.

As a result of public comments, we learned there are no existing carbon black production facilities that are area sources. Consequently, there are no costs or burden hours associated with the monitoring, reporting and recordkeeping requirements for existing area sources. No costs or burden hours are estimated for new carbon black production area sources because no new sources are estimated during the next 3 years.

The testing, monitoring, recordkeeping, and reporting requirements for existing chromium compounds manufacturing area sources are the same as the requirements that are in the current title V operating permit for the two existing facilities. The only new information collection requirements that apply to these area sources consist of initial notifications, SSM plans, and control device inspections at one plant. Any new chromium compounds manufacturing area source is subject to all information collection requirements in the part 63 General Provisions.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 194 labor hours per year at a cost

of $16,409 for the two existing chromium compounds manufacturing area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new chromium compounds manufacturing area sources because no new area sources are estimated during the next 3 years.

The final NESHAP for flexible polyurethane foam production and fabrication operations area sources require a one-time notification by slab stock foam facilities certifying that they do not use methylene chloride and records documenting that they do not use methylene chloride. One plant that uses methylene chloride is subject to additional reporting requirements.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 925 labor hours per year at a cost of $78,337 for the 500 or more existing flexible foam fabrication and production area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new flexible foam production or fabrication area sources because no new sources are estimated during the next 3 years.

The testing and monitoring requirements for emissions sources equipped with a scrubbing system at new and existing lead acid battery manufacturing area sources are the same as the requirements that are in the NSPS (40 CFR part 60, subpart KK). Monitoring requirements for emissions sources equipped with fabric filter are also included in the final rule. New information collection requirements that apply to these area sources consist of notifications, records, and reports required by the part 63 General Provisions.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 2,302 labor hours per year at a cost of $172,477 for the approximately 60 existing lead acid battery manufacturing area sources, with capital/startup costs of $4,840 and no operation and maintenance costs. No costs or burden hours are estimated for new lead acid battery manufacturing area sources because no new sources are estimated during the next 3 years.

The final NESHAP for wood preserving area sources does not include testing or monitoring requirements because they are subject to management practices. The only new information collection requirements that apply to these existing area sources consist of initial notifications, records demonstrating compliance with the management practice requirements, and deviation reporting requirements.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 1,055 labor hours per year at a cost of $89,324 for approximately 400 existing wood preserving area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements. No costs or burden hours are estimated for new wood preserving area sources because no new sources are estimated during the next 3 years.

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 numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 1,000 employees for acrylic and modacrylic fibers production and chromium compounds manufacturing and less than 500 employees for carbon black production, flexible polyurethane foam production and fabrication, lead-acid battery manufacturing, and wood preserving); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. There will not be adverse impacts on existing area sources in any of the seven source categories because the final rules do not create any new requirements or burdens for existing sources other than minimal notification requirements.

Although the final NESHAP contain emissions control requirements for new area sources in all seven source categories, we are not specifically aware of any new sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. These final rules are designed to harmonize with existing State or local requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to 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 the final rules 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 one year. Thus, the final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rules do not significantly or uniquely affect small governments. The final rules contain no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them. Therefore, the final rules are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

These final rules 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. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' These final rules 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, as specified in Executive Order 13175. These final rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to these final rules.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern 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 final rules are not subject to Executive Order 13045 because they are not economically significant and because they are based on technology performance and not on health or safety risks.

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

These final rules are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these final rules are not likely to have any adverse energy effects because energy requirements would remain at existing levels. No additional pollution controls or other equipment that would consume energy are required by these final rules.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final rules involve technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 9 and 22 in 40 CFR part 60, appendix A. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see 40 CFR 63.14) is cited in one of these final rules for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B. This ASTM method is a VCS.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 5D, 9 or 22. The search and review results are in the docket for these final rules.

The search for emissions measurement procedures identified 12 other VCS. The EPA determined that these 12 standards identified for measuring emissions of the HAP or surrogates subject to emissions standards in these final rules were impractical alternatives to EPA test

methods. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 12 methods are discussed in a memorandum included in the docket for these final rules.

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

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

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

EPA has determined that these final rules will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These final rules establish national standards for each area source category.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). These final rules will be effective on July 16, 2007.

List of Subjects in 40 CFR Part 63

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

Dated: June 15, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), and Table 5 of subpart DDDDD of this part.

* * * * *

■ 3. Part 63 is amended by adding subpart LLLLLL to read as follows:

Subpart LLLLLL—National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources

Sec.

Applicability and Compliance Dates

§ 63.11393 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an acrylic or modacrylic fibers production plant that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each acrylic or modacrylic fibers plant.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

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

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

§ 63.11394 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than January 16, 2008.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions of this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11395 What are the standards and compliance requirements for existing sources?

(a) You must operate and maintain capture or enclosure systems that collect

the gases and fumes containing acrylonitrile (AN) released from polymerization process equipment and monomer recovery process equipment and convey the collected gas stream through a closed vent system to a control device.

(b) Except as provided in paragraph (b)(3) of this section, you must not discharge to the atmosphere through any combination of stacks or other vents captured gases containing AN in excess of the emissions limits in paragraphs (b)(1) and (2) of this section.

(1) 0.2 pounds of AN per hour (lb/hr) from the control device for polymerization process equipment.

(2) 0.05 lb/hr of AN from the control device for monomer recovery process equipment.

(3) If you do not comply with the emissions limits in paragraphs (b)(1) and (2) of this section, you must comply with the new source standards for process vents in § 63.11396(a).

(c) If you use a wet scrubber control device, you must comply with the control device parameter operating limits in paragraphs (c)(1) and (2) of this section.

(1) You must maintain the daily average water flow rate to a wet scrubber used to control polymerization process equipment at a minimum of 50 liters per minute (l/min). If the water flow to the wet scrubber ceases, the polymerization reactor(s) must be shut down.

(2) You must maintain the daily average water flow rate to a wet scrubber used to control monomer recovery process equipment at a minimum of 30 l/min.

(d) You must comply with the requirements of the New Source Performance Standard for Volatile Organic Liquids (40 CFR part 60, subpart Kb) for vessels that store acrylonitrile. The provisions in 40 CFR 60.114b do not apply to this subpart.

(e) You must operate continuous parameter monitoring systems (CPMS) to measure and record the water flow rate to a wet scrubber control device for the polymerization process equipment and the monomer recovery process equipment. The CPMS must record the water flow rate at least every 15 minutes and determine and record the daily average water flow rate.

(f) You must determine compliance with the daily average control device parameter operating limits for water flow rate in paragraph (c) of this section on a monthly basis and submit a summary report to EPA or the delegated authority on a quarterly basis. Should the daily average water flow rate to a wet scrubber control device for the polymerization process equipment fall below 50 l/min or the daily average water flow rate to a wet scrubber control device for the monomer recovery process equipment fall below 30 l/min, you must notify EPA or the delegated authority in writing within 10 days of the identification of the exceedance.

(g) You must keep records of each monthly compliance determination for the water flow rate operating parameter limits in a permanent form suitable for inspection and retain the records for at least 2 years following the date of each compliance determination.

(h) You must conduct a performance test for each control device for polymerization process equipment and monomer recovery process equipment subject to an emissions limit in paragraph (b) of this section within 180 days of your compliance date and report the results in your notification of compliance status. You must conduct each test according to the requirements in § 63.7 of subpart A and § 63.1104 of subpart YY. You are not required to conduct a performance test if a prior performance test was conducted using the methods specified in § 63.1104 of subpart YY and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(i) If you do not use a wet scrubber control device for the polymerization process equipment or the monomer recovery process equipment, you must submit a monitoring plan to EPA or the delegated authority for approval. Each plan must contain the information in paragraphs (i)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with § 63.1104 of subpart YY verifying the performance of the device for reducing AN to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

(j) If you do not operate a monomer recovery process that removes AN prior to spinning, you must comply with the requirements in paragraph (j)(1), (2), or (3) of this section for each fiber spinning line that uses a spin dope produced from either a suspension polymerization process or solution polymerization process.

(1) You must reduce the AN concentration of the spin dope to less than 100 parts per million by weight (ppmw); or

(2) You must design and operate a fiber spinning line enclosure according to the requirements in § 63.1103(b)(4) of subpart YY and reduce AN emissions by 85 weight-percent or more by venting emissions from the enclosure through a closed vent system to any combination of control devices meeting the requirements in § 63.982(a)(2) of subpart SS; or

(3) You must reduce AN emissions from the spinning line to less than or equal to 0.5 pounds of AN per ton (lb/ton) of acrylic and modacrylic fiber produced.

(k) You may change the operating limits for a wet scrubber if you meet the requirements in paragraphs (k)(1) through (3) of this section.

(1) Submit a written notification to the Administrator to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emissions limit for a control device in paragraph (b) of this section.

(3) Establish revised operating limits according to the procedures in paragraphs (k)(3)(i) and (ii) of this section.

(i) Using the CPMS required in paragraph (e) of this section, measure and record the water flow rate to the wet scrubber in intervals of no less than 15 minutes during each AN test run.

(ii) Determine and record the average water flow rate for each test run. Your operating limit is the lowest average flow rate during any test run that complies with the applicable emissions limit.

(l) You must treat process and maintenance wastewater containing AN in a wastewater treatment system. You must keep records that list each process and maintenance wastewater stream that contains AN and a process flow diagram of the wastewater treatment system that identifies each wastewater stream.

§ 63.11396 What are the standards and compliance requirements for new sources?

(a) You must comply with the requirements in paragraph (a)(1) or (2) of this section for each process vent where the AN concentration of the vent stream is equal to or greater than 50 parts per million by volume (ppmv) and

the average flow rate is equal to or greater than 0.005 cubic meters per minute, as determined by the applicability and assessment procedures in § 63.1104 of subpart YY.

(1) You must reduce emissions of AN by 98 weight-percent or limit the concentration of AN in the emissions to no more than 20 ppmv, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements for process vents in § 63.982(a)(2) of subpart SS; or

(2) You must reduce emissions of AN by using a flare that meets the requirements of § 63.987 of subpart SS.

(b) You must comply with the requirements in paragraph (b)(1), (2), or (3) of this section for each fiber spinning line that uses a spin dope produced from either a suspension polymerization process or solution polymerization process.

(1) You must reduce the AN concentration of the spin dope to less than 100 ppmw; or

(2) You must design and operate a fiber spinning line enclosure according to the requirements in § 63.1103(b)(4) of subpart YY and reduce AN emissions by 85 weight-percent or more by venting emissions from the enclosure through a closed vent system to any combination of control devices meeting the requirements in § 63.982(a)(2) of subpart SS; or

(3) You must reduce AN emissions from the spinning line to less than or equal to 0.5 pounds of AN per ton (lb/ton) of acrylic and modacrylic fiber produced.

(c) You must comply with the requirements for storage vessels holding acrylonitrile as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY.

(d) You must comply with the requirements for equipment that contains or contacts 10 percent by weight or more of AN and operates 300 hours per year as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY.

(e) You must comply with the requirements for process wastewater and maintenance wastewater from an acrylic and modacrylic fibers production process as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY. Process wastewater and maintenance wastewater that contains AN and is not subject to the requirements in Table 2 to § 63.1103(b)(3)(i) of subpart YY must be treated in a wastewater treatment system.

(f) You must comply with all testing, monitoring, recordkeeping, and reporting requirements in subpart SS (for process vents); subpart SS or WW (for AN tanks); subpart TT or UU (for equipment leaks); and subpart G (for process wastewater and maintenance wastewater). Only the provisions in §§ 63.132 through 63.148 and §§ 63.151 through 63.153 of subpart G apply to this subpart.

(g) If you use a control device other than a wet scrubber, flare, incinerator, boiler, process heater, absorber, condenser, or carbon adsorber, you must prepare and submit a monitoring plan to the Administrator for approval. Each plan must contain the information in paragraphs (g)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (f) of this section verifying the performance of the device for reducing AN to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

Other Requirements and Information

§ 63.11397 What General Provisions apply to this subpart?

(a) You must meet the requirements of the General Provisions in 40 CFR part 63, subpart A, as shown in Table 1 to this subpart.

(b) If you own or operate an existing affected source, your notification of compliance status required by § 63.9(h) must include the following information:

(1) This certification of compliance, signed by a responsible official, for the standards in § 63.11395(a): ''This facility complies with the management practices required in § 63.11395(a) for operation of capture systems for polymerization process equipment and monomer recovery process equipment.''

(2) This certification of compliance, signed by a responsible official, for the emissions limits in § 63.11395(b): ''This facility complies with the emissions limits in § 63.11395(b)(1) and (2) for control devices serving the polymerization process equipment and monomer recovery process equipment based on previous performance tests in accordance with § 63.11395(h)'' or ''This facility complies with the alternative standards for process vents in § 63.11395(b)(3) based on previous performance tests and assessments in accordance with § 63.11396(f)''. If you conduct a performance test or assessment to demonstrate compliance, you must include the results of the performance test and/or assessment.

(3) This certification of compliance, signed by a responsible official, for the standards for storage tanks in § 63.11396(d): ''This facility complies with the requirements of 40 CFR part 60, subpart Kb for each tank that stores acrylonitrile.''

(4) This certification of compliance, signed by a responsible official, for the requirement in Table 1 to subpart LLLLLL for preparation of a startup, shutdown, and malfunction plan: ''This facility has prepared a startup, shutdown, and malfunction plan in accordance with the requirements of 40 CFR 63.6(e)(3).''

(c) If you own or operate a new affected source, your notification of compliance status required by § 63.9(h) must include:

(1) The results of the initial performance test or compliance demonstration for each process vent (including closed vent system and control device, flare, or recovery device), fiber spinning line, AN storage tank, equipment, and wastewater stream subject to this subpart.

(2) This certification of compliance, signed by a responsible official, for the applicable emissions limit in § 63.11396(a) for process vents: ''This facility complies with the emissions limits in § 63.11396(a) for each process vent subject to control.''

(3) This certification of compliance, signed by a responsible official, for the applicable emissions limit in § 63.11396(b) for each fiber spinning line: ''This facility complies with the emissions limit and/or management practice requirements in § 63.11396(b)(1), (2), or (3) for each fiber spinning line.''

(4) This certification of compliance, signed by a responsible official, for the storage tank requirements in § 63.11396(c): ''This facility complies with the requirements for storage vessels holding acrylonitrile as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY.''

(5) This certification of compliance, signed by a responsible official, for the equipment leak requirements in § 63.11396(d): ''This facility complies with the requirements for all equipment that contains or contacts 10 percent by weight or more of AN and operates 300 hours per year or more as shown in Table 2 to § 63.1103(b)(3)(i) of subpart YY.''

(6) This certification of compliance, signed by a responsible official, for the process wastewater and maintenance wastewater requirements in § 63.11396(e): ''This facility complies with the requirements in Table 2 to § 63.1103(b)(3)(i) of subpart YY for each process wastewater stream and each maintenance wastewater stream.''

(d) If you own or operate a new affected source, you must report any deviation from the requirements of this subpart in the semiannual report required by 40 CFR 63.10(e)(3).

§ 63.11398 What definitions apply to this subpart?

Acrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

Acrylic and modacrylic fibers production means the production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber.

Acrylonitrile solution polymerization means a process where acrylonitrile and comonomers are dissolved in a solvent to form a polymer solution (typically polyacrylonitrile). The polyacrylonitrile is soluble in the solvent. In contrast to suspension polymerization, the resulting reactor polymer solution (spin dope) is filtered and pumped directly to the fiber spinning process.

Acrylonitrile suspension polymerization means a polymerization process where small drops of acrylonitrile and comonomers are suspended in water in the presence of a catalyst where they polymerize under agitation. Solid beads of polymer are formed in this suspension reaction which are subsequently filtered, washed, refiltered, and dried. The beads must be subsequently redissolved in a solvent to create a spin dope prior to introduction to the fiber spinning process.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or management practice;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Equipment means each of the following that is subject to this subpart: pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve connector, instrumentation system in organic HAP service which contains or contacts greater than 10 percent by weight of acrylonitrile and operates more than 300 hours per year.

Fiber spinning line means the group of equipment and process vents associated with acrylic or modacrylic fiber spinning operations. The fiber spinning line includes (as applicable to the type of spinning process used) the blending and dissolving tanks, spinning solution filters, wet spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, dry, or draw the spun fiber.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the process unit, whose primary product is a product produced by a source category subject to this subpart, into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewaters include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, and draining of portions of the process unit, whose primary product is a product produced by a source category subject to this subpart, for repair.

Modacrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 35 percent by weight of acrylonitrile units but less than 85 percent by weight of acrylonitrile units.

Monomer recovery process equipment means the collection of process units and associated process equipment used to reclaim the monomer for subsequent reuse, including but not limited to polymer holding tanks, polymer buffer tanks, monomer vacuum pump flush drum, and drum filter vacuum pump flush drum.

Polymerization process equipment means the collection of process units and associated process equipment used in the acrylonitrile polymerization process prior to the fiber spinning line, including but not limited to acrylonitrile storage tanks, recovered monomer tanks, monomer measuring tanks, monomer preparation tanks, monomer feed tanks, slurry receiver tanks, polymerization reactors, and drum filters.

Process vent means the point of discharge to the atmosphere (or point of entry into a control device, if any) of a gas stream from the acrylic and modacrylic fibers production process.

Process wastewater means wastewater, which during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Responsible official means responsible official as defined at 40 CFR 70.2.

Spin dope means the liquid mixture of polymer and solvent that is fed to the spinneret to form the acrylic and modacrylic fibers.

§ 63.11399 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/ reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11397(a), you must comply with the requirements of the NESHAP General Provisions (40

CFR part 63, subpart A) as shown in the following table.

TABLE 1.—TO SUBPART LLLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLLL

Citation	Subject	Applies to subpart LLLLLL?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12) (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f) (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes	Subpart LLLLLL requires new and existing sources to comply with requirements for startups, shutdowns, and malfunctions in § 63.6(e)(3).
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart LLLLLL does not include opacity or visible emissions standards or require a continuous opacity monitoring system.
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements.	Yes/No	Subpart LLLLLL requires performance tests for new and existing sources; a test for an existing source is not required if a prior test meets the conditions in § 63.11395(h).
63.7(b), (c)		Yes/No	Requirements for notification of performance test and for quality assurance program apply to new sources but not existing sources.
63.8(a)(1), (a)(2), (b), (c)(1)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		Yes	Requirements apply to new sources if flares are the selected control option.
63.8(c)(4)–(c)(8), (d), (e), (f)(6), (g)		Yes	Requirements apply to new sources but not to existing sources.
63.9(a), (b)(1), (b)(5), (c), (d), (i), (j).	Notification Requirements	Yes.	
63.9(e)		Yes/No	Notification of performance test is required for new area sources.
63.9(b)(2)		Yes	Initial notification of applicability is required for new and existing area sources.
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4), (h)(5)		No.	
63.9(f), (g)		No	Subpart LLLLLL does not require a continuous opacity monitoring system or continuous emissions monitoring system.
63.9(h)(1)–(h)(3), (h)(6)		Yes	Notification of compliance status is required for new and existing area sources.
63.10(a)	Recordkeeping Requirements	Yes.	
63.10(b)(1)		Yes/No	Record retention requirement applies to new area sources but not existing area sources. Subpart LLLLLL establishes 2-year retention period for existing area sources.
63.10(b)(2)		Yes	Recordkeeping requirements for startups, shutdowns, and malfunctions apply to new and existing area sources.
63.10(b)(3)		Yes	Recordkeeping requirements for applicability determinations apply to new area sources.
63.10(c)(1), (c)(5)–(c)(14)		Yes/No	Recordkeeping requirements for continuous parameter monitoring systems apply to new sources but not existing sources.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(1), (d)(4), (e)(1), (e)(2), (f)	Reporting Requirements	Yes.	
63.10(d)(2)		Yes	Report of performance test results applies to each area source required to conduct a performance test.
63.10(d)(3)		No	Subpart LLLLLL does not include opacity or visible emissions limits.

TABLE 1.—TO SUBPART LLLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLLL—Continued

Citation	Subject	Applies to subpart LLLLLL?	Explanation
63.10(d)(5)		Yes	Requirements for startup, shutdown, and malfunction reports apply to new and existing area sources.
(e)(1)–(e)(2), (e)(4)		No	Subpart LLLLLL does not require a continuous emissions monitoring system or continuous opacity monitoring system.
63.10(e)(3)		Yes/No	Semiannual reporting requirements for excess emissions and parameter monitoring exceedances apply to new area sources but not existing area sources.
63.11	Control Device Requirements	Yes	Requirements apply to new sources if flares are the selected control option.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions.	Yes.	

■ 4. Part 63 is amended by adding subpart MMMMMM to read as follows:

Subpart MMMMMM—National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources

Sec.

Applicability and Compliance Dates

63.11400 Am I subject to this subpart?
63.11401 What are my compliance dates?

Standards and Compliance Requirements

63.11402 What are the standards and compliance requirements for new and existing sources?
63.11403 [Reserved]

Other Requirements and Information

63.11404 What General Provisions apply to this subpart?
63.11405 What definitions apply to this subpart?
63.11406 Who implements and enforces this subpart?

Applicability and Compliance Dates

§ 63.11400 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a carbon black production facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each carbon black production process unit. The affected source includes all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit.

(1) An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

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

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11401 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by July 16, 2007.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions of this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11402 What are the standards and compliance requirements for new and existing sources?

You must meet all the requirements in § 63.1103(f) of subpart YY.

§ 63.11403 [Reserved]

Other Requirements and Information

§ 63.11404 What General Provisions apply to this subpart?

The provisions in 40 CFR part 63, subpart A, applicable to this subpart are §§ 63.1 through 63.5 and §§ 63.11 through 63.16.

§ 63.11405 What definitions apply to this subpart?

The terms used in this subpart are defined in §§ 63.1101 and 63.1103(f)(2).

§ 63.11406 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.992(b)(1).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

■ 5. Part 63 is amended by adding subpart NNNNNN to read as follows:

Subpart NNNNNN—National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds

Sec.

Applicability and Compliance Dates

§ 63.11407 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a chromium compounds manufacturing facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each chromium compounds manufacturing facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commence construction or reconstruction of the affected source after April 4, 2007.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11408 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart not later than January 16, 2008.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions of this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11409 What are the standards?

(a) You must operate a capture system that collects the gases and fumes released during the operation of each emissions source listed in Table 1 of this subpart and conveys the collected gas stream to a particulate matter (PM) control device.

(b) You must not discharge to the atmosphere through any combination of stacks or other vents process gases from an emissions source listed in Table 1 of this subpart that contain PM in excess of the allowable process rate determined according to Equation 1 of this section (for an emissions source with a process rate of less than 30 tons per hour) or Equation 2 of this section (for an emissions source with a process rate of 30 tons per hour or greater). If more than one process vents to a common stack, the applicable emissions limit for the stack is the sum of allowable emissions calculated for each process using Equation 1 or 2 of this section, as applicable.

$$E = 4.1 \times P^{0.67} \qquad \text{(Eq. 1)}$$

Where:

E = Emissions limit in pounds per hour (lb/hr); and

P = Process rate of emissions source in tons per hour (ton/hr).

$$E = 55 \times P^{0.11} - 40 \qquad \text{(Eq. 2)}$$

§ 63.11410 What are the compliance requirements?

(a) *Existing sources.* If you own or operate an existing area source, you must comply with the requirements in paragraphs (b) through (e) of this section.

(b) *Initial control device inspection.* You must conduct an initial inspection of each PM control device according to the requirements in paragraphs (b)(1) through (4) of this section. You must conduct each inspection no later than 60 days after your applicable compliance date for each installed control device which has been operated within 60 days of the compliance date. For an installed control device which has not been operated within 60 days of the compliance date, you must conduct an initial inspection prior to startup of the control device.

(1) For each baghouse, you must visually inspect the system ductwork and baghouse unit for leaks. You must also inspect the inside of each baghouse for structural integrity and fabric filter condition. You must record the results of the inspection and any maintenance action in the logbook required in paragraph (d) of this section. An initial inspection of the internal components of a baghouse is not required if an inspection has been performed within the past 12 months.

(2) For each dry electrostatic precipitator, you must verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold. You must also visually inspect the system ductwork and electrostatic precipitator housing unit and hopper for leaks and inspect the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, hopper, and air diffuser plates. An initial inspection of the internal components of a dry electrostatic precipitator is not required if an inspection has been performed within the past 24 months.

(3) For each wet electrostatic precipitator, you must verify the proper functioning of the electronic controls for corona power, that the corona wires are energized, and that water flow is present. You must also visually inspect the system ductwork and electrostatic precipitator housing unit and hopper for leaks and inspect the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate wash spray heads, hopper, and air diffuser plates. An initial inspection of the internal components of a wet electrostatic precipitator is not required if an inspection has been performed within the past 24 months.

(4) For each wet scrubber, you must verify the presence of water flow to the scrubber. You must also visually inspect the system ductwork and scrubber unit for leaks and inspect the interior of the scrubber for structural integrity and the condition of the demister and spray nozzle.

(i) An initial inspection of the internal components of a wet scrubber is not required if an inspection has been performed within the past 12 months.

(i) An initial inspection of the internal components of a wet scrubber is not required if an inspection has been performed within the past 12 months.

(ii) The requirement in paragraph (b)(4) of this section for initial inspection of the internal components of a wet scrubber does not apply to a cyclonic scrubber installed upstream of a wet or dry electrostatic precipitator.

(c) *Periodic inspections/maintenance.* Following the initial inspections, you must perform periodic inspections and maintenance of each PM control device according to the requirements in paragraphs (c)(1) through (4) of this section.

(1) You must inspect and maintain each baghouse according to the requirements in paragraphs (c)(1)(i) and (ii) of this section.

(i) You must conduct monthly visual inspections of the system ductwork for leaks.

(ii) You must conduct inspections of the interior of the baghouse for structural integrity and to determine the condition of the fabric filter every 12 months. If an initial inspection is not required by paragraph (b)(1) of this section, the first inspection must not be more than 12 months from the last inspection.

(2) You must inspect and maintain each dry electrostatic precipitator according to the requirements in paragraphs (c)(2)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the proper functioning of the electronic controls for corona power and rapper operation, that the corona wires are energized, and that adequate air pressure is present on the rapper manifold.

(ii) You must conduct monthly visual inspections of the system ductwork, housing unit, and hopper for leaks.

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months.

(3) You must inspect and maintain each wet electrostatic precipitator according to the requirements in paragraphs (c)(3)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the proper functioning of the electronic controls for corona power, that the corona wires are energized, and that water flow is present.

(ii) You must conduct monthly visual inspections of the system ductwork, electrostatic precipitator housing unit, and hopper for leaks.

(iii) You must conduct inspections of the interior of the electrostatic precipitator to determine the condition and integrity of corona wires, collection plates, plate rappers, hopper, and air diffuser plates every 24 months. If an initial inspection is not required by paragraph (b)(2) of this section, the first inspection must not be more than 24 months from the last inspection.

(4) You must inspect and maintain each wet scrubber according to the requirements in paragraphs (c)(4)(i) through (iii) of this section.

(i) You must conduct a daily inspection to verify the presence of water flow to the scrubber.

(ii) You must conduct monthly visual inspections of the system ductwork and scrubber unit for leaks.

(iii) You must conduct inspections of the interior of the scrubber to determine the structural integrity and condition of the demister and spray nozzle every 12 months. Internal inspections of cyclonic scrubbers installed upstream of wet or dry electrostatic precipitators are not required.

(d) *Recordkeeping requirements.* You must record the results of each inspection and maintenance action in a logbook (written or electronic format). You must keep the logbook onsite and make the logbook available to the permitting authority upon request. You must keep records of the information specified in paragraphs (d)(1) through (4) of this section for 5 years following the date of each recorded action.

(1) The date and time of each recorded action for a fabric filter, the results of each inspection, and the results of any maintenance performed on the bag filters.

(2) The date and time of each recorded action for a wet or dry electrostatic precipitator (including ductwork), the results of each inspection, and the results of any maintenance performed on the electrostatic precipitator.

(3) The date and time of each recorded action for a wet scrubber (including ductwork), the results of each inspection, and the results of any maintenance performed on the wet scrubber.

(4) Records of all required monitoring data and supporting information including all calibration and maintenance records, original strip-chart recordings for continuous monitoring information, and copies of all reports required by this subpart. You must maintain records of required monitoring data in a form suitable and readily available for expeditious review. All records must be kept onsite and made available to EPA or the delegated authority for inspection upon request. You must maintain records of all required monitoring data and supporting information for at least 5 years from the date of the monitoring sample, measurement, report, or application.

(e) *Reports.* (1) You must report each deviation (an action or condition not in accordance with the requirements of this subpart, including upset conditions but excluding excess emissions) to the permitting agency on the next business day after becoming aware of the deviation. You must submit a written report within 2 business days which identifies the probable cause of the deviation and any corrective actions or preventative actions taken. All reports of deviations must be certified by a responsible official.

(2) You must submit semiannual reports of monitoring and recordkeeping activities to your permitting authority.

(3) You must submit the results of any maintenance performed on each PM control device within 30 days of a written request by the permitting authority.

(f) *New sources.* If you own or operate a new affected source, you must comply with the requirements in paragraphs (g) and (h) of this section.

(g) *Bag leak detection systems.* You must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the PM emissions limit in § 63.11409 according to paragraph (g)(1) of this section; prepare and operate by a site-specific monitoring plan according to paragraph (g)(2) of this section; take corrective action according to paragraph (g)(3) of this section; and record information according to paragraph (g)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (g)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 0.00044 grains per actual cubic foot or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (g)(1)(iv) of this section, and the alarm

must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (g)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (g)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to an approved site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (g)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (g)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (g)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective baghouse compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the particulate emissions.

(4) You must maintain records of the information specified in paragraphs (g)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(h) *Other control devices.* If you use a control device other than a baghouse, you must prepare and submit a monitoring plan to EPA or the delegated authority for approval. You must operate and maintain the control device according to an approved site-specific monitoring plan at all times. Each plan must contain the information in paragraphs (h)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (i) of this section verifying the performance of the device for reducing PM to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emissions limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

(i) *Performance tests.* If you own or operate a new affected source, you must conduct a performance test for each emissions source subject to an emissions limit in § 63.11409(b) within 180 days of your compliance date and report the results in your notification of compliance status. If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the past 5 years of the effective date using the same methods specified in paragraph (j) of this section and either no process changes have been made since the test, or if you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(j) *Test methods.* You must conduct each performance test according to the requirements in § 63.7 and paragraphs (j)(1) through (3) of this section.

(1) Determine the concentration of PM according to the following test methods in 40 CFR part 60, appendix A:

(i) Method 1 or 1A to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D to determine the concentration of particulate matter (front half filterable catch only). Three valid test runs are needed to comprise a performance test.

(2) During the test, you must operate each emissions source within ±10

and record the process rate during the test.

(3) Compute the mass emissions (E) in pounds per hour (lb/hr) for each test run using Equation 1 of this section and the process rate measured during the test. The PM emissions in lb/hr must be less than the allowable PM emissions rate for the emissions source.

$$E = \frac{C \times Q}{K} \qquad \text{(Eq. 1)}$$

Where:

E = Mass emissions of PM, pounds per hour (lb/hr);
C = Concentration of PM, grains per dry standard cubic foot (gr/dscf);
Q = Volumetric flow rate of stack gas, dry standard cubic foot per hour (dscf/hr); and
K = Conversion factor, 7,000 grains per pound (gr/lb).

(k) *Startups, shutdown, and malfunctions.* The requirements in paragraphs (k)(1) and (2) of this section apply to the owner or operator of a new or existing affected source.

(1) Except as provided in paragraph (k)(2) of this section, you must report emissions in excess of a PM emissions limit established by this subpart lasting for more than 4 hours that result from a malfunction, a breakdown of process or control equipment, or any other abnormal condition by 9 a.m. of the next business day of becoming aware of the occurrence. You must provide the name and location of the facility, the nature and cause of the malfunction or breakdown, the time when the malfunction or breakdown is first observed, the expected duration, and the estimated rate of emissions. You must also notify EPA or the delegated authority immediately when corrected measures have been accomplished and, if requested, submit a written report within 15 days after the request.

(2) As an alternative to the requirements in paragraph (k)(1) of this section, you must comply with the startup, shutdown, and malfunction requirements in § 63.6(e)(3).

Other Requirements and Information

§ 63.11411 What General Provisions apply to this subpart?

(a) You must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A as specified in Table 2 to this subpart.

(b) Your notification of compliance status required by § 63.9(h) must include the following information for a new or existing affected source:

(1) This certification of compliance, signed by a responsible official, for the standards in § 63.11409(a): ''This facility complies with the management practice requirements in § 63.11409(a) for installation and operation of capture systems for each emissions source subject to an emissions limit in § 63.11409(b).''

(2) This certification of compliance by the owner or operator of an existing source (if applicable), signed by a responsible official, for the emissions limits in § 63.11409(b): ''This facility complies with the emissions limits in § 63.11409(b) based on a previous performance test in accordance with § 63.11410(i).''

(3) The process rate for each emissions source subject to an emissions limit in § 63.11409(b) that represents normal and representative production operations.

(4) The procedures used to measure and record the process rate for each emissions source subject to an emissions limit in § 63.11409(b).

(5) This certification of compliance by the owner or operator of an existing affected source, signed by a responsible official, for the control device inspection and maintenance requirements in § 63.11410(b) through (d): ''This facility has conducted an initial inspection of each control device according to the requirements in § 63.11410(b), will conduct periodic inspections and maintenance of control devices in accordance with § 63.11410(c), and will maintain records of each inspection and maintenance action in the logbook required by § 63.11410(d).''

(6) This certification of compliance by the owner or operator of a new affected source, signed by a responsible official, for the bag leak detection system monitoring plan requirement in § 63.11410(g)(2): ''This facility has an approved bag leak detection system monitoring plan in accordance with § 63.11410(g)(2).''

(7) Performance test results for each emissions unit at a new affected source (or each emissions source at an existing affected source if a test is required) in accordance with § 63.11410(j). The performance test results for a new affected source must identify the daily average parameter operating limit for each PM control device.

(8) If applicable, this certification of compliance by the owner or operator of a new or existing source, signed by a responsible official, for the requirement in paragraph (k)(2) of this section to comply with the startup, shutdown, and malfunction provisions in 40 CFR 63.6(e)(3): ''This facility has prepared a startup, shutdown, and malfunction plan in accordance with 40 CFR 63.6(e)(3)''.

§ 63.11412 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Chromic acid means chromium trioxide (CrO_3). It is produced by the electrolytic reaction or acidification of sodium dichromate.

Chromium compounds manufacturing means any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide.

Chromium compounds manufacturing facility means the collection of processes and equipment at a plant engaged in chromium compounds manufacturing.

Chromite ore means an oxide of chromium and iron ($FeCr_2O_4$) that is the primary feedstock for chromium compounds manufacturing.

Chromic oxide means Cr_2O_3. In the production of chromic oxide, ammonium sulfate and sodium dichromate that have been concentrated by evaporation are mixed and fed to a rotary roasting kiln to produce chromic oxide, sodium sulfate and nitrogen gas.

Roasting means a heating (oxidizing) process where ground chromite ore is mixed with alkaline material (such as soda ash, sodium bicarbonate, and sodium hydroxide) and fed to a rotary kiln where it is heated to about 2,000 °F, converting the majority of the chromium in the ore from trivalent to hexavalent chromium.

Sodium chromate means Na_2CrO_4. It is produced by roasting chromite ore in a rotary kiln.

Sodium dichromate means sodium bichromate or sodium bichromate dihydrate and is known technically as sodium dichromate dihydrate ($Na_2Cr_2O_7 \bullet 2H_2O$). It is produced by the electrolytic reaction or acidification of sodium chromate.

§ 63.11413 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA

Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11409, you must install and operate capture systems and comply with the applicable emissions limit for each emissions source shown in the following table.

TABLE 1 TO SUBPART NNNNNN OF PART 63.—HAP EMISSIONS SOURCES

Process	Emissions sources
1. Sodium chromate production.	a. Ball mill used to grind chromite ore.
	b. Dryer used to dry chromite ore.
	c. Rotary kiln used to roast chromite ore to produce sodium chromate.
	d. Secondary rotary kiln used to recycle and refine residues containing chromium compounds.
	e. Residue dryer system.
	f. Quench tanks.
2. Sodium dichromate production.	a. Stack on the electrolytic cell system used to produce sodium dichromate.
	b. Sodium dichromate crystallization unit.
	c. Sodium dichromate drying unit.
3. Chromic acid production.	a. Electrolytic cell system used to produce chromic acid.
	b. Melter used to produce chromic acid.
	c. Chromic acid crystallization unit.
	d. Chromic acid dryer.
4. Chromic oxide production.	a. Primary rotary roasting kiln used to produce chromic oxide.
	b. Chromic oxide filter.
	c. Chromic oxide dryer.
	d. Chromic oxide grinding unit.
	e. Chromic oxide storage vessel.
	f. Secondary rotary roasting kiln.
	g. Quench tanks.
5. Chromium hydrate production.	a. Furnace used to produce chromium hydrate.
	b. Chromium hydrate grinding unit.

As required in § 63.11411(a), you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 2 TO SUBPART NNNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNNN

Citation	Subject	Applies	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes	The startup, shutdown, and malfunction requirements in § 63.6(e)(3) apply at new and existing area sources that choose to comply with § 63.11410(k)(2) instead of the requirements in § 63.11410(k)(1).
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart NNNNNN does not include opacity or visible emissions standards or require a continuous opacity monitoring system.
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements.	Yes	Subpart NNNNNN requires a performance test for a new source; a test for an existing source is not required under the conditions specified in § 63.11410(i).
63.7(b), (c)		Yes/No	Requirements for notification of performance test and for quality assurance program apply to new area sources but not existing area sources.
63.8(a)(1), (a)(2), (b), (c)(1)–(c)(3), (f)(1)–(5).	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		No	Subpart NNNNNN does not require flares.
63.8(c)(4)–(c)(8), (d), (e), (f)(6), (g)		No	Subpart NNNNNN establishes requirements for continuous parameter monitoring systems.

TABLE 2 TO SUBPART NNNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNNN—Continued

Citation	Subject	Applies	Explanation
63.9(a), (b)(1), (b)(5), (c), (d), (i), (j).	Notification Requirements	Yes.	
63.9(e)		Yes/No	Notification of performance test is required only for new area sources.
63.9(b)(2)		Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4), (h)(5)		No.	
63.9(f), (g)		No	Subpart NNNNNN does not include opacity or visible emissions standards or require a continuous opacity monitoring system or continuous emissions monitoring system.
63.9(h)(1)–(h)(3), (h)(6)		Yes.	
63.10(a), (b)(1), (b)(2)(xii), (b)(2)(xiv), (b)(3).	Recordkeeping Requirements	Yes.	
63.10(b)(2)(i)–(b)(2)(v)		Yes.	Recordkeeping requirements for startups, shutdowns, and malfunctions apply to new and existing area sources that choose to comply with § 63.11410(k)(2).
63.10(b)(2)(vi)–(b)(2)(ix), (c)(1), (c)(5)–(c)(14).		Yes/No	Requirements apply to continuous parameter monitoring systems at new area sources but not existing area sources.
63.10(b)(2)(vii)(A)–(B), (b)(2)(x), (b)(2)(xiii).		No.	
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(1), (d)(4), (f)	Reporting Requirements	Yes.	
63.10(d)(2)		Yes	Report of performance test results applies to new area sources; the results of a previous test may be submitted for an existing area source under the conditions specified in § 63.11410(i).
63.10(d)(3)		No	Subpart NNNNNN does not include opacity or visible emissions limits.
63.10(d)(5)		Yes	Requirements for startup, shutdown, and malfunction reports apply to new and existing area sources that choose to comply with § 63.11410(k)(2).
63.10(e)(1)–(e)(2), (e)(4)		No	Subpart NNNNNN does not require a continuous emissions monitoring system or continuous opacity monitoring system.
63.10(e)(3)		Yes/No	Semiannual reporting requirements apply to new area sources but not existing area sources.
63.11	Control Device Requirements	No	Subpart NNNNNN does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

■ 6. Part 63 is amended by adding subpart OOOOOO to read as follows:

Subpart OOOOOO—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources

Sec.

Applicability and Compliance Dates

§ 63.11414 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an area source of hazardous air pollutant (HAP) emissions that meets the criteria in paragraph (a)(1) or (2) of this section.

(1) You own or operate a plant that produces flexible polyurethane foam or rebond foam as defined in § 63.1292 of subpart III.

(2) You own or operate a flexible polyurethane foam fabrication facility, as defined in § 63.11419.

(b) The provisions of this subpart apply to each new and existing affected source that meets the criteria listed in paragraphs (b)(1) through (4) of this section.

(1) A slabstock flexible polyurethane foam production affected source is the collection of all equipment and activities necessary to produce slabstock flexible polyurethane foam.

(2) A molded flexible polyurethane foam production affected source is the collection of all equipment and activities necessary to produce molded foam.

(3) A rebond foam production affected source is the collection of all equipment and activities necessary to produce rebond foam.

(4) A flexible polyurethane foam fabrication affected source is the collection of all equipment and activities at a flexible polyurethane foam fabrication facility where adhesives are used to bond foam to foam or other substrates. Equipment and activities at flexible polyurethane foam fabrication facilities which do not use adhesives to bond foam to foam or other substrates are not flexible polyurethane foam fabrication affected sources.

(c) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(d) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

(e) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

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

§ 63.11415 What are my compliance dates?

(a) If you own or operate an existing slabstock flexible polyurethane foam production affected source, you must achieve compliance with the applicable provisions in this subpart by July 16, 2008.

(b) If you own or operate an existing molded flexible polyurethane foam affected source, an existing rebond foam production affected sources, or an existing flexible polyurethane foam fabrication affected source, you must achieve compliance with the applicable provisions in this subpart by July 16, 2007.

(c) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions in this subpart not later than July 16, 2007.

(d) If you startup a new affected source after July 16, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11416 What are the standards for new and existing sources?

(a) If you own or operate a slabstock flexible polyurethane foam production affected source, you must meet the requirements in paragraph (b) of this section. If you own or operate a molded foam affected source, you must meet the requirements in paragraph (c) of this section. If you own or operate a rebond foam affected source, you must meet the requirements in paragraph (d) of this section. If you own or operate a flexible polyurethane foam fabrication affected source, you must meet the requirements in paragraph (e) of this section.

(b) If you own or operate a new or existing slabstock polyurethane foam production affected source, you must comply with the requirements in either paragraph (b)(1) or (2) of this section.

(1) Comply with § 63.1293(a) or (b) of subpart III, except that you must use Equation 1 of this section to determine the HAP auxiliary blowing agent (ABA) formulation limit for each foam grade instead of Equation 3 of § 63.1297 of subpart III.

You must use zero as the formulation limitation for any grade of foam where the result of the formulation equation (using Equation 1 of this section) is negative (*i.e.*, less than zero):

$$ABA_{limit} = -0.2\,(IFD) - 19.1\left(\frac{1}{IFD}\right) - 15.3\,(DEN) - 6.8\left(\frac{1}{DEN}\right) + 36.5 \qquad \text{(Equation 1)}$$

where:

ABA_{limit} = HAP ABA formulation limitation, parts methylene chloride ABA allowed per hundred parts polyol (pph).
IFD = Indentation force deflection, pounds.
DEN = Density, pounds per cubic foot.

(2) Use no material containing methylene chloride for any purpose in any slabstock flexible foam production process.

(c) If you own or operate a new or existing molded foam affected source, you must comply with the requirements in paragraphs (c)(1) and (2) of this section.

(1) You must not use a material containing methylene chloride as an equipment cleaner to flush the mixhead or use a material containing methylene chloride elsewhere as an equipment cleaner in a molded flexible polyurethane foam process.

(2) You must not use a mold release agent containing methylene chloride in a molded flexible polyurethane foam process.

(d) If you own or operate a new or existing rebond foam affected source, you must comply with the requirements in paragraphs (d)(1) and (2) of this section.

(1) You must not use a material containing methylene chloride as an equipment cleaner in a rebond foam process.

(2) You must not use a mold release agent containing methylene chloride in a rebond foam process.

(e) If you own or operate a new or existing flexible polyurethane foam fabrication affected source, you must not use any adhesive containing methylene chloride in a flexible polyurethane foam fabrication process.

(f) You may demonstrate compliance with the requirements in paragraphs (b)(2) and (c) through (e) of this section using adhesive usage records, Material Safety Data Sheets, and engineering calculations.

§ 63.11417 What are the compliance requirements for new and existing sources?

(a) If you own or operate a slabstock flexible polyurethane foam production affected source, you must comply with the requirements in paragraph (b) of this section. If you own or operate a molded foam affected source, rebond foam affected source, or a loop slitter at a flexible polyurethane foam fabrication affected source you must comply with the requirements in paragraphs (c) and (d) of this section.

(b) Each owner or operator of a new or existing slabstock flexible polyurethane foam production affected source who chooses to comply with § 63.11416(b)(1) must comply with paragraph (b)(1) of this section. Each owner or operator of a new or existing slabstock flexible polyurethane foam production affected source who chooses to comply with § 63.11416(b)(2) must comply with paragraphs (b)(2) and (3) of this section.

(1) You must comply with paragraphs (b)(1)(i) through (v) of this section.

(i) The monitoring requirements in § 63.1303 of subpart III.

(ii) The testing requirements in § 63.1304 or § 63.1305 of subpart III.

(iii) The reporting requirements in § 63.1306 of subpart III, with the exception of the reporting requirements in § 63.1306(d)(1), (2), (4), and (5) of subpart III.

(iv) The recordkeeping requirements in § 63.1307 of subpart III, with the exception of the recordkeeping requirements in § 63.1307(a)(1), (b)(1)(i), and (b)(2).

(v) The compliance demonstration requirements in § 63.1308(a), (c), and (d) of subpart III.

(2) You must submit a notification of compliance status report no later than 180 days after your compliance date. The report must contain the information detailed in § 63.9(h)(2)(i) paragraphs (A) and (G), and must contain this certification of compliance, signed by a responsible official, for the standards in § 63.11416(b)(2): ''This facility uses no material containing methylene chloride for any purpose on any slabstock flexible foam process.''

(3) You must maintain records of the information used to demonstrate compliance, as required in § 63.11416(f). You must maintain the records for 5 years, with the last 2 years of data retained on site. The remaining 3 years of data may be maintained off site.

(c) You must have a compliance certification on file by the compliance date. This certification must contain the statements in paragraph (c)(1), (2), or (3) of this section, as applicable, and must be signed by a responsible official.

(1) For a molded foam affected source:

(i) ''This facility does not use any equipment cleaner to flush the mixhead which contains methylene chloride, or any other equipment cleaner containing methylene chloride in a molded flexible polyurethane foam process in accordance with § 63.11416(c)(1).''

(ii) ''This facility does not use any mold release agent containing methylene chloride in a molded flexible polyurethane foam process in accordance with § 63.11416(c)(2).''

(2) For a rebond foam affected source:

(i) ''This facility does not use any equipment cleaner which contains methylene chloride in a rebond flexible polyurethane foam process in accordance with § 63.11416(d)(1).''

(ii) ''This facility does not use any mold release agent containing methylene chloride in a rebond flexible polyurethane foam process in accordance with § 63.11416(d)(2).''

(3) For a flexible polyurethane foam fabrication affected source containing a loop slitter: ''This facility does not use any adhesive containing methylene chloride on a loop slitter process in accordance with § 63.11416(e).''

(d) For molded foam affected sources, rebond foam affected sources, and flexible polyurethane foam fabrication affected sources containing a loop slitter, you must maintain records of the information used to demonstrate compliance, as required in § 63.11416(f). You must maintain the records for 5 years, with the last 2 years of data retained on site. The remaining 3 years of data may be maintained off site.

Other Requirements and Information

§ 63.11418 What General Provisions apply to this subpart?

The provisions in 40 CFR part 63, subpart A, applicable to sources subject to § 63.11416(b)(1) are specified in Table 1 of this subpart.

§ 63.11419 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; § 63.1292 of subpart III; § 63.8830 of subpart MMMMM; § 63.2 of subpart A; and in this section as follows:

Flexible polyurethane foam fabrication facility means a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates.

§ 63.11420 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11418, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART OOOOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOOOO

Subpart A reference	Applies to Subpart OOOOOO?	Comment
§ 63.1	Yes.	
§ 63.2	Yes	Definitions are modified and supplemented by § 63.11419.
§ 63.3	Yes.	
§ 63.4	Yes.	
§ 63.5	Yes.	
§ 63.6(a)–(d)	Yes.	
§ 63.6(e)(1)–(2)	Yes.	
§ 63.6(e)(3)	No	Owners and operators of subpart OOOOOO affected sources are not required to develop and implement a startup, shutdown, and malfunction plan.
§ 63.6 (f)–(g)	Yes.	
§ 63.6(h)	No	Subpart OOOOOO does not require opacity and visible emissions standards.
§ 63.6 (i)–(j)	Yes.	
§ 63.7	No	Performance tests not required by subpart OOOOOO.

TABLE 1 TO SUBPART OOOOOO OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOOOO—Continued

Subpart A reference	Applies to Subpart OOOOOO?	Comment
§ 63.8	No	Continuous monitoring, as defined in subpart A, is not required by subpart OOOOOO.
§ 63.9(a)–(d)	Yes.	
§ 63.9(e)–(g)	No.	
§ 63.9(h)	No	Subpart OOOOOO specifies Notification of Compliance Status requirements.
§ 63.9 (i)–(j)	Yes.	
§ 63.10(a)–(b)	Yes	Except that the records specified in § 63.10(b)(2) are not required.
§ 63.10(c)	No.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)–(3)	No.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	No.	
§ 63.10(e)	No.	
§ 63.10(f)	Yes.	
§ 63.11	No.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	
§ 63.16	Yes.	

■ 7. Part 63 is amended by adding subpart PPPPPP to read as follows:

Subpart PPPPPP—National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources

Sec.

Applicability and Compliance Dates

§ 63.11421 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a lead acid battery manufacturing plant that is an area source of hazardous air pollutants (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each lead acid battery manufacturing plant. The affected source includes all grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

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

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

§ 63.11422 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart by no later than July 16, 2008.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with the applicable provisions in this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11423 What are the standards and compliance requirements for new and existing sources?

(a) You must meet all the standards for lead in 40 CFR 60.372.

(b) You must meet the monitoring requirements in paragraphs (b)(1) and (2) of this section.

(1) For any emissions point controlled by a scrubbing system, you must meet the requirements in 40 CFR 60.373.

(2) For any emissions point controlled by a fabric filter, you must meet the requirements of paragraph (b)(2)(i) of this section and either paragraph (b)(2)(ii) or (iii) of this section. Fabric filters equipped with a high efficiency particulate air (HEPA) filter or other secondary filter are allowed to monitor less frequently, as specified in paragraph (b)(2)(iv) of this section.

(i) You must perform semiannual inspections and maintenance to ensure proper performance of each fabric filter. This includes inspection of structural and filter integrity. You must record the results of these inspections.

(ii) You must install, maintain, and operate a pressure drop monitoring device to measure the differential pressure drop across the fabric filter during all times when the process is operating. The pressure drop shall be recorded at least once per day. If a pressure drop is observed outside of the normal operational ranges, you must record the incident and take immediate

corrective actions. You must also record the corrective actions taken. You must submit a monitoring system performance report in accordance with § 63.10(e)(3).

(iii) You must conduct a visible emissions observation at least once per day to verify that no visible emissions are occurring at the discharge point to the atmosphere from any emissions source subject to the requirements of paragraph (a) of this section. If visible emissions are detected, you must record the incident and conduct an opacity measurement in accordance with 40 CFR 60.374(b)(3). You must record the results of each opacity measurement. If the measurement exceeds the applicable opacity standard in 40 CFR 60.372(a)(7) or (8), you must submit this information in an excess emissions report required under § 63.10(e)(3).

(iv) Fabric filters equipped with a HEPA filter or other secondary filter are allowed to monitor less frequently, as specified in paragraph (b)(2)(iv)(A) or (B) of this section.

(A) If you are using a pressure drop monitoring device to measure the differential pressure drop across the fabric filter in accordance with paragraph (b)(2)(ii) of this section, you must record the pressure drop at least once per week. If a pressure drop is observed outside of the normal operational ranges, you must record the incident and take immediate corrective actions. You must also record the corrective actions taken. You must submit a monitoring system performance report in accordance with § 63.10(e)(3).

(B) If you are conducting visible emissions observations in accordance with paragraph (b)(2)(iii) of this section, you must conduct such observations at least once per week and record the results in accordance with paragraph (b)(2)(iii) of this section. If visible emissions are detected, you must record the incident and conduct an opacity measurement in accordance with 40 CFR 60.374(b)(3). You must record the results of each opacity measurement. If the measurement exceeds the applicable opacity standard in 40 CFR 60.372(a)(7) or (8), you must submit this information in an excess emissions report required under § 63.10(e)(3).

(c) You must meet the testing requirements in 40 CFR 60.374.

(1) Existing sources are not required to conduct a performance test if a prior performance test was conducted using the same methods specified in 40 CFR 60.374 and either no process changes have been made since the test, or you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Sources without a prior performance test, as described in paragraph (b) of this section, must conduct a performance test using the methods specified in 40 CFR 60.374 by 180 days after the compliance date.

§ 63.11424 [Reserved]

Other Requirements and Information

§ 63.11425 What General Provisions apply to this subpart?

(a) The provisions in 40 CFR part 63, subpart A, that are applicable to this subpart are specified in Table 1 to this subpart.

(b) For existing sources, the initial notification required by § 63.9(b) must be submitted not later than November 13, 2007.

(c) For existing sources, the notification of compliance required by § 63.9(h) must be submitted not later than September 15, 2008.

§ 63.11426 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; 40 CFR 60.371; 40 CFR 60.2 for terms used in the applicable provisions of part 60, subpart A, as specified in § 63.11425(a); and § 63.2 for terms used in the applicable provisions of part 63, subpart A, as specified in § 63.11425(b).

§ 63.11427 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under 40 CFR 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11425, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART PPPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPPP

Citation	Subject	Applies to Subpart PPPPPP?	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations.		
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a)–(d), (e)(1), (f)–(j)	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(e)(3)		No	Subpart PPPPPP does not require a startup, shutdown, and malfunction plan.
63.7	Performance Testing Requirements.	Yes.	
63.8	Monitoring Requirements	Yes.	

TABLE 1 TO SUBPART PPPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPPP—Continued

Citation	Subject	Applies to Subpart PPPPPP?	Explanation
63.9		Yes.	
63.10(a)–(c), (d)(1)–(4), (e), (f)	Recordkeeping and Reporting Requirements.	Yes.	
63.10(d)(5)		No	Subpart PPPPPP does not require a startup, shutdown, and malfunction plan.
63.11	Control Device Requirements	No	Subpart PPPPPP does not require flares.
63.12	State Authorities and Delegations.	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	
63.1(a)(5), (a)(7)–(9), (b)(2), (c)(3), (d), 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv), 63.8(a)(3), 63.9(b)(3), (h)(4), 63.10(c)(2)–(c)(4), (c)(9).	Reserved	No.	

■ 8. Part 63 is amended by adding subpart QQQQQQ to read as follows:

Subpart QQQQQQ—National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

Sec.

Applicability and Compliance Dates

Standards

Other Requirements and Information

Applicability and Compliance Dates

§ 63.11428 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a wood preserving operation that is an area source of hazardous air pollutant (HAP) emissions.

(b) The affected source is each new or existing wood preserving operation.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before April 4, 2007.

(2) An affected source is new if you commenced construction or reconstruction of the affected source after April 4, 2007.

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

§ 63.11429 What are my compliance dates?

(a) If you have an existing affected source, you must achieve compliance with applicable provisions in this subpart by July 16, 2007.

(b) If you startup a new affected source on or before July 16, 2007, you must achieve compliance with applicable provisions in this subpart not later than July 16, 2007.

(c) If you startup a new affected source after July 16, 2007, you must achieve compliance with applicable provisions in this subpart upon initial startup.

Standards

§ 63.11430 What are the standards?

(a) If you use a pressure treatment process with any wood preservative containing chromium, arsenic, dioxins, or methylene chloride at a new or existing area source, the preservative must be applied to the wood product inside a retort or similarly enclosed vessel.

(b) If you use a thermal treatment process with any wood preservative containing chromium, arsenic, dioxins, or methylene chloride at a new or existing area source, the preservative must be applied using process treatment tanks equipped with an air scavenging system to control emissions.

(c) If you use any wood preservative containing chromium, arsenic, dioxins, or methylene chloride at a new or existing area source, you must prepare and operate according to a management practice plan to minimize air emissions from the preservative treatment of wood at a new or existing area source. You may use your standard operating procedures to meet the requirements for a management practice plan if it includes the minimum activities required for a management practice plan. The management practice plan must include, but is not limited to, the following activities:

(1) Minimize preservative usage;

(2) Maintain records on the type of treatment process and types and amounts of wood preservatives used at the facility;

(3) For the pressure treatment process, maintain charge records identifying pressure reading(s) inside the retorts (or similarly enclosed vessel);

(4) For the thermal treatment process, maintain records that the air scavenging system is in place and operated properly during the treatment process;

(5) Store treated wood product on drip pads or in a primary containment area to convey preservative drippage to a collection system until drippage has ceased;

(6) For the pressure treatment process, fully drain the retort to the extent practicable, prior to opening the retort door;

(7) Promptly collect any spills; and

(8) Perform relevant corrective actions or preventative measures in the event of a malfunction before resuming operations.

§ 63.11431 [Reserved]

Other Requirements and Information

§ 63.11432 What General Provisions apply to this subpart?

(a) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or methylene chloride, you must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, according to Table 1 to this subpart.

(b) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or methylene chloride, you must submit an initial notification of applicability required by § 63.9(a)(2) no later than 90 days after the applicable compliance date specified in § 63.11429. The initial notification may be combined with the notification of compliance status required in paragraph (c) of this section. The notification of applicability must include the following information:

(1) The name and address of the owner or operator;

(2) The address (*i.e.*, physical location) of the affected source; and

(3) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date.

(c) If you own or operate a new or existing affected source that uses any wood preservative containing chromium, arsenic, dioxins, or methylene chloride, you must submit a notification of compliance status required by § 63.9(h) no later than 90 days after the applicable compliance date specified in § 63.11429. Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the standards in § 63.11430: ''This facility complies with the management practices to minimize air emissions from the preservative treatment of wood in accordance with § 63.11430.''

(d) You must report any deviation from the requirements of this subpart within 30 days of the deviation.

§ 63.11433 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, § 63.2, and in this section as follows:

Air scavenging system means an air collection and control system that collects and removes vapors from a thermal treatment process vessel and vents the emissions to a vapor recovery tank that collects condensate from the vapors.

Chromated copper arsenate (CCA) means a chemical wood preservative consisting of mixtures of water-soluble chemicals containing metal oxides of chromium, copper, and arsenic. CCA is used in pressure treated wood to protect wood from rotting due to insects and microbial agents.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or management practice;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Pressure treatment process means a wood treatment process involving an enclosed vessel, usually a retort, and the application of pneumatic or hydrostatic pressure to expedite the movement of preservative liquid into the wood.

Responsible official means responsible official as defined in 40 CFR 70.2.

Retort means an airtight pressure vessel, typically a long horizontal cylinder, used for the pressure impregnation of wood products with a liquid wood preservative.

Thermal treatment process means a non-pressurized wood treatment process where the wood is exposed to a heated preservative.

Wood preserving means the pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers.

§ 63.11434 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11432, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART QQQQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQQ

Citation	Subject	Applies to subpart QQQQQQ?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12)(b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	

TABLE 1 TO SUBPART QQQQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQQ—Continued

Citation	Subject	Applies to subpart QQQQQQ?	Explanation
63.4	Prohibited Activities and Circumvention.	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(1), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (h)(1), (h)(2), (h)(4), (h)(5)(i)–(h)(5)(iii), (h)(v)(v), (h)(6)–(h)(9).	No	Subpart QQQQQQ does not require startup, shutdown, and malfunction plan or contain emission or opacity limits.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.7	Performance Testing Requirements.	No	Subpart QQQQQQ does not require performance tests.
63.8(a)(1), (a)(2), (a)(4), (b), (c), (d), (e), (f), (g).	Monitoring Requirements	No	Subpart QQQQQQ does not require monitoring of emissions.
63.8(a)(3)	Reserved	No.	
63.9(a), (b)(1), (b)(2), (b)(4), (b)(5), (c), (d), (h)(1), (h)(6), (i), (j).	Notification Requirements	Yes.	
63.9(b)(2)(i)–(b)(2)(v), (h)(2)(i)–(h)(2)(ii), (h)(3), (h)(5).		Yes.	
63.9(e), (f), (g)		No.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.10(a), (b), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(14), (d), (e), (f).	Recordkeeping and Reporting Requirements.	No	Subpart QQQQQQ establishes requirements for a report of deviations within 30 days.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.11	Control Device Requirements	No	Subpart QQQQQQ does not require flares.
63.12	State Authorities and Delegations.	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

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