G. National Technology Transfer and Advancement Act

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

H. 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

I. Submission to Congress and the Comptroller General

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 this rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Chemical accident prevention, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: May 25, 2001.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

Part 63, chapter I, title 40 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—General Provisions

2. Section 63.14 is amended by revising paragraph (d)(2) to read as follows:

§ 63.14 Incorporations by reference.

* * *

(d) * * *

(2) New Jersey's *Toxic Catastrophe Prevention Act Program*, (July 20, 1998), Incorporation By Reference approved for § 63.99 (a)(30)(i) of subpart E of this part.

* * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by adding a new paragraph (a)(30) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(30) New Jersey

(i) Affected sources must comply with the Toxic Catastrophe Prevention Act Program (TCPA), (July 20, 1998), (incorporated by reference as specified in § 63.14) as described in paragraph (a)(30)(i)(A) of this section:

(A) Except for authorities identified as not being delegated, the regulations incorporated in New Jersey's ''Toxic Catastrophe Prevention Act Program,'' Title 7, Chapter 31, of the New Jersey Administrative Code: Subchapter 1, ''General Provisions'' (sections 1.1 to 1.10 except for the definition of ''What if Checklist''), Subchapter 2, ''Hazard Assessment,'' Subchapter 3, ''Minimum Requirements for a Program 2 TCPA Risk Management Program,'' Subchapter 4, ''Minimum Requirements for a Program 3 TCPA Risk Management Program,'' Subchapter 5, ''Emergency Response,'' Subchapter 6, ''Extraordinarily Hazardous Substances,'' Subchapter 7, ''Risk Management Plan and TCPA Submission,'' and Subchapter 8, ''Other Federal Requirements,'' (effective July 20, 1998), pertain to the sources affected by 40 CFR part 68 and have been approved under the procedures in §§ 63.91, 63.93 and 63.95 to be implemented and enforced in place of 40 CFR part 68, Subparts A through H, as may be amended.

(*1*) Authorities not delegated:

(*i*) The New Jersey Department of Environmental Protection is not delegated the Administrator's authority to implement and enforce New Jersey's Toxic Catastrophe Prevention Act Program, Title 7, Chapter 31, of the New Jersey Administrative Code, in lieu of the provisions of 40 CFR part 68 as they apply to the regulation of processes that are covered only because they contain regulated quantities of liquid petroleum gases (LPG) regulated under the New Jersey Liquified Petroleum Gas Act of 1950 (N.J.S.A. 21:1B),

(*ii*) Pursuant to § 63.90(c) the New Jersey Department of Environmental Protection is not delegated the Administrator's authority to add or delete substances from the list of substances established under section 112(r) and set forth in 40 CFR 68.130.

[FR Doc. 01–16561 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 264

[FRL–7001–8]

RIN 2050

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on targeted amendments to the regulations for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999 (NESHAP: Final

Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). The revisions make improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. We are approving these revisions to make it easier to comply with the September 30, 1999 final rule.

DATES: This rule is effective on October 16, 2001 without further notice, unless EPA receives adverse comment by August 17, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: If you wish to comment on this direct final rule, you must send an original and two copies of the comments referencing Docket Number F–2001–RC4F–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of the NESHAP portion of this direct final rule, contact Mr. Frank Behan at 703–308–8476, *behan.frank@epa.gov,* or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view these as noncontroversial amendments. We anticipate no adverse comment because we have worked with the interested parties in their development. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the emissions standards for hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators promulgated on September 30, 1999, if adverse comments are filed. This direct final rule will be effective on October 16, 2001 without further notice unless we receive adverse comment by August 17, 2001. If EPA receives adverse comment on one or more distinct amendments of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any of the distinct amendments in today's rulemaking for which we do not receive adverse comment will become effective on the date set above. We will address all public comments in a subsequent final rule based on the proposed rule, including any adverse comment on any distinct amendment, paragraph, or section of today's rule. We will not institute a second comment period on this action. Any parties interested in commenting on any amendment must do so at this time.

Electronic Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov.* You should identify comments in electronic format with the docket number F–2001–RC4F–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Acronyms Used in the Rule

BIF—Boilers and industrial furnaces
CAA—Clean Air Act
CEMS—Continuous emissions monitors/monitoring system
CFR—Code of Federal Regulations
DOC—Documentation of Compliance
DRE—Destruction and removal efficiency
dscf—Dry standard cubic feet
dscm—Dry standard cubic meter
EPA/USEPA—United States Environmental Protection Agency
gr—Grains
HAP—Hazardous air pollutant
HWC—Hazardous waste combustor
MACT—Maximum Achievable Control Technology
MTEC—Maximum theoretical emissions concentration
NESHAP—National Emission Standards for Hazardous Air Pollutants
NIC—Notice of Intent to Comply
NOC—Notification of compliance
NODA—Notice of data availability
OPL—Operating parameter limit
PM—Particulate matter
POHC—Principal organic hazardous constituent
ppmv—Parts per million by volume
RCRA—Resource Conservation and Recovery Act
SVM—Semivolatile metals (lead and cadmium)
μg—Microgram

Table of Contents

Part One: Overview and Background for This Direct Final Rule

I. What Is the Purpose of This Direct Final Rule?

Today's notice makes specific changes to the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). After promulgation, commenters (primarily the regulated community) raised numerous potential issues through informal comments and during litigation settlement discussions. After considering the issues raised, we have decided to promulgate a limited number of changes to the final rule, most of them relating to compliance and implementation.

In a separate action today, we are proposing and soliciting comment on several additional amendments to the Phase I rule. If you wish to comment on those amendments, you must submit comments following the directions in the **ADDRESSES** section of that action.

The remaining sections of this part provide additional background information on the Phase I final rule.

II. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112 of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's notice, we refer to these three categories collectively as hazardous waste combustors (HWC). Hazardous waste combustors burn about 80% of the hazardous waste combusted annually within the United States. The Phase I HWC MACT standards are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year.

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at *www.epa.gov/hwcmact.*

III. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the Phase I HWC MACT final rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 ''Fast Track'' final rule (63 FR 33783). Additionally, specific to the Phase I HWC MACT final rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the Phase I HWC MACT final rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the Phase I rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 ''Fast Track'' final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA,* 217 F. 3d 861 (D.C. Cir. No. 99–1236). The court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in 40 CFR 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the Phase I HWC MACT final rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the Phase I rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the Phase I HWC MACT final rule from the Code of Federal Regulations (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

Part Two: NESHAP—Amendments to the HWC Final Rule

I. Hazardous Waste Residence Time

''Hazardous waste residence time'' is defined at § 63.1201(a) as the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste, excluding residues that may adhere to combustion chamber surfaces, exit the combustion chamber. As stakeholders recognize, hazardous waste residence time has significant regulatory and enforcement implications. For example, if sources

were to exceed an operating requirement or emission standard after the hazardous waste residence time has expired, it is not a violation if the exceedance occurred because of a start-up, shut-down, or malfunction and sources follow the procedures and corrective measures prescribed in the start-up, shut-down, and malfunction plan. In addition, after the hazardous waste residence time has expired, sources may elect to comply with emission standards the Agency has promulgated under sections 112 and 129 of the Clean Air Act for source categories that do not burn hazardous waste. They would comply with these standards in lieu of the hazardous waste combustor standards of Subpart EEE, Part 63. See § 63.1206(b)(1).

Since promulgation of the hazardous waste combustor rule, stakeholders have raised an issue: what is the hazardous waste residence time for sources that continuously recycle hazardous waste-derived materials?

We are taking direct final action so that recycled hazardous waste-derived materials should not be considered when calculating hazardous waste residence time.[1] See revision to the definition of hazardous waste residence time at § 63.1201(a).

A. What Causes Recycle Loops and What Is the Potential Consequence?

Cement kilns, and possibly other hazardous waste combustors, continuously volatilize and condense toxic constituents derived from hazardous waste in recycle loops within the kiln. For example, chlorine and semivolatile metal hazardous air pollutants, such as lead and cadmium, will volatilize in the kiln and partition to the combustion gas. A portion of these waste-derived, toxic materials will condense before the combustion gas exits the kiln and will partition back into the raw material bed. Thus, these waste-derived, toxic materials are recycled internally within the kiln.

In addition, cement kilns generally recycle a portion of their collected particulate matter, known as cement kiln dust, back into the kiln. This cement kiln dust contains toxic constituents derived from hazardous waste fuel, including metals that are hazardous air pollutants.

[1] Another special case for addressing residence time is vitrification melter units, where certain inorganic waste components are incorporated into the vitrified melt, and where it is not desirable to remove the entire melt (i.e., the melt is removed from the chamber at lengthy, infrequent intervals). In these cases, it may be appropriate for sources to recommend an alternative ''effective waste treatment'' residence time under § 63.1209(g)(1).

Stakeholders request that these recycle loops not be considered when calculating hazardous waste residence time. Stakeholders note that if the hazardous waste-derived materials in these recycle loops were to be considered in calculating residence time, then: (1) It would be very problematic to document when the recycled waste constituents finally exit the kiln; and (2) the hazardous waste residence time would not elapse for an unnecessarily protracted period of time.

B. How Are We Addressing This Issue?

We conclude that recycle loops need not be considered in calculating hazardous waste residence time to ensure compliance with the emission standards. Emissions of semivolatile metals, low volatile metals, and particulate matter immediately prior to a waste feed cutoff will typically be well below levels demonstrated during the performance test and thus below the emission standard. This is because sources typically spike metals (add extra metals to the waste fuel) during performance testing to establish a wide envelope of operating limits to reflect the maximum operating variability they are likely to encounter in actual operation, providing sufficient operating flexibility for unexpected situations. We do not believe, though, that conditions will invariably reflect this maximum variability before a waste feed cutoff. In addition, notwithstanding recycle loops, hazardous waste-derived metals emissions will begin to decrease upon waste feed cutoff. The levels will continue to decrease while the hazardous waste residence time elapses and will decrease to very low levels after the electrostatic precipitator or baghouse undergoes a cleaning cycle. Therefore, the metal emission standards should not be exceeded due to recycle loops containing hazardous waste-derived materials.

For these reasons, we are revising the definition of hazardous waste residence time at § 63.1201(a).

II. Deletion of One-Time Notification of Compliance With Alternative Clean Air Act Standards

If a source is not feeding hazardous waste and the hazardous waste residence time has expired, the source may elect to comply temporarily with alternative, otherwise applicable standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source makes this election, § 63.1206(b)(1)(ii)(A) currently requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards.

The rule requires this notice to alert regulatory officials that a source claims to have met the regulatory requirements for the otherwise applicable standards (i.e., section 112 and 129 standards the source would be subject to if the source did not burn hazardous waste). For example, a hazardous waste burning cement kiln may elect to comply with the MACT standards and operating requirements applicable to Portland cement manufacturing facilities provided under Subpart LLL after the hazardous waste residence time has transpired. The notice enables regulatory officials to know which sources claim to be in full compliance with such otherwise applicable standards and will assist those officials in establishing source inspection priorities.

Stakeholders have raised two issues since promulgation, however, that have led us to conclude that this notification requirement is unnecessary. First, stakeholders have indicated that virtually all sources are likely to want to have the option to switch temporarily to compliance under otherwise applicable section 112 or 129 standards at some point during their operations. Thus, the notice would not have the intended effect of singling out those sources that chose to do so for the purpose of establishing inspection priorities.

Stakeholders also point out that this notification requirement is duplicative of the title V compliance certification requirement of § 70.5(c)(9) that requires permit applicants to include in their application a detailed description of the source's compliance status and a certification by a responsible official of compliance with all applicable requirements. In addition, stakeholders state that title V sources must submit annual certifications of compliance with all applicable requirements. See § 70.6(c)(5). Thus, stakeholders note that the only scenario where the § 63.1206(b)(1)(ii)(A) notification requirement is not duplicative is for sources that have not yet been required to submit a certification under title V.

In addition, if sources anticipate complying temporarily with the alternative standards for nonhazardous waste combustors after the hazardous waste residence time has expired, sources may include appropriate terms and conditions in the title V permit using the ''reasonably anticipated operating scenario'' provisions of

§ 70.6(a)(9).[2] Once both scenarios (i.e., for burning hazardous waste and not burning hazardous waste) are included in the permit, sources simply document in the operating record when they switch from one scenario to another.

Finally, we also note that this notification requirement has been targeted for deletion under the Office of Solid Waste Burden Reduction Project. *See* 64 FR 32859 for the goals and objectives of this project.

For these reasons, we are deleting the notification requirement of § 63.1206(b)(1)(ii)(A).

III. Use of DRE Data in Lieu of Testing

We are revising two provisions associated with the allowance to use previously collected data in lieu of the initial performance test or the Destruction and Removal Efficiency (DRE) test under §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2). We are taking final action to: (1) Remove the existing restriction preventing the use of DRE test data collected prior to March 1998 to document compliance with the DRE standard [3]; and (2) eliminate the requirement limiting previous data to only RCRA permit issuance or reissuance testing results.

A. Why Are We Allowing DRE Data Obtained Prior to March 1998 To Be Used in Lieu of a New DRE Test?

Stakeholders question why the rule restricts the age of DRE data for sources required to conduct only one DRE test for the life of the source. For DRE testing, the rule states that if you fire hazardous waste in the flame zone, and the system is not modified, then you are only required to demonstrate compliance with the MACT DRE emissions standard once over the operational life of the device. However, as part of the final rule data in lieu provisions, we limit the use of previous test data submitted for the initial comprehensive performance test to data collected after March 1998. Stakeholders believe that this limit substantially reduces the number of sources that can submit previous DRE test data in lieu of conducting an additional DRE test. They say that most sources conducted their RCRA trial burns before March 1998 and therefore would be ineligible to submit these tests. Stakeholders point out that if a one-time test is sufficient for the life of the source, then we should not place a limit on previous RCRA data. We agree with this logic and are revising the rule today to require testing only for those sources that are modified or that fire at a location other than the flame zone.

B. Why Are We Allowing the Use of Data Obtained for Purposes Other Than RCRA Permit Issuance or Reissuance?

Stakeholders also express concern about the restrictions the rule places on the type of data that can substitute for a MACT performance test. The rule now stipulates that only data collected for the purpose of RCRA permit issuance or re-issuance can be submitted as in lieu data. Our primary concern with in lieu data submittals is to ensure data quality. Upon reevaluation, we believe data that is not associated with RCRA permit issuance or re-issuance can be reviewed by the regulatory authority to determine whether they are suitable for demonstrating compliance with the DRE standard and for setting MACT operating limits. We now understand that several sources engage in other types of CAA performance testing with oversight and quality assurance requirements comparable to RCRA testing. This modification will allow sources to coordinate CAA and RCRA testing that may facilitate early compliance. In today's direct final rule, we are modifying the current data in lieu provisions to allow sources to submit any test data in lieu of conducting a MACT performance test provided that the data meet our quality assurance requirements (except for DRE, as discussed above). We emphasize that a data in lieu of request must provide adequate quality assurance and quality control documentation. In most cases, tests conducted without significant regulatory oversight (and particularly without a reasonable opportunity for significant oversight) would not be considered to be of sufficiently known quality for use as data in lieu of testing.

For these reasons, we are revising the requirements of §§ 63.1206(b)(6), 63.1206(b)(7), and 63.1207(c)(2).

IV. Time Extension for Waiving PM and Opacity Standards To Correlate PM CEMS

For facilities voluntarily using a particulate matter (PM) continuous emissions monitoring system (CEMS), the final rule allows the particulate matter standard and operating parameter limits used to ensure compliance with that standard to be waived for up to a 96-hour period during a PM CEMS correlation test. (*See* 64 FR 53046). This waiver period is necessary because PM CEMS outputs must be correlated to manual method results and during this time it is sometimes necessary to exceed the applicable operating parameter limits to produce an accurate correlation. The correlation is most accurate over the range of particulate matter emissions tested, so correlation tests should be performed over the full range of expected particulate matter emissions for the particular facility. We determined that allowing a facility to operate above the particulate matter standard for a 96-hour period is reasonable because this is a sufficient amount of time to: (1) Increase emissions to the desired level and reach system equilibrium; (2) perform correlation tests at the equilibrium condition; (3) return to normal equipment settings indicative of compliance with emissions standards and operating parameter limits; and (4) achieve equilibrium at normal conditions. (64 FR 52929).

Stakeholders contend that 96 hours may be too short of a time period to fulfill the testing requirements and that the regulations should allow for a longer time period. From the limited information available on the time required for PM CEMS correlation, they believe that 96 hours may be insufficient to complete the testing, particularly for HWCs that burn a variety of solid wastes. Petitioners suggest we change this provision to allow periods longer than 96 hours with the Administrator's approval.

In a March 2, 2000 letter to EPA, stakeholders describe the time necessary to complete PM CEMS correlation tests at an Eli Lilly incinerator as an indication of the need for additional time beyond the existing 96 hours. In Phase II of Eli Lilly's CEMS tests, Eli Lilly needed approximately 54 hours to achieve a successful correlation (Eli Lilly collected 34 data points requiring approximately three hours per data point above the particulate matter standard). This 54 hours only represented the testing time and did not include pre-and post-testing adjustments or the time before and after the tests when the incinerator was reaching equilibrium. The petitioners also point out that Eli Lilly had personnel with extensive experience in adjusting their incinerator to achieve desired HWC MACT particulate matter concentrations. Facilities with personnel who do not have this experience will go through a lengthy learning process and may need even more time. Therefore, stakeholders believe the current 96-hour allowance is not adequate to correlate a PM CEMS device in an accurate manner.

[2] Note that Subpart EEE incorporates this provision as § 63.1209(q), operating under different modes of operation.

[3] If hazardous waste is fed at a location other than the normal flame zone, sources must conduct periodic DRE testing. See § 63.1206(b)(7)(ii).

Based on the Eli Lilly experience and discussions with PM CEMS testing personnel, we agree that the 96-hour period may not be sufficient for hazardous waste combustors to correlate their PM CEMS. Furthermore, we do not want a 96-hour time limit to be a disincentive to use of PM CEMS. We conclude a site specific extension is the appropriate mechanism to ensure accurate calibrations and to encourage the use of particulate matter continuous emissions monitoring systems. Therefore, we are adding the phrase ''unless more time is approved by the Administrator'' to § 63.1206(b)(8)(v).

V. Alternative Hydrocarbon Monitoring Location for Short Cement Kilns Burning Hazardous Waste at Locations Other Than the ''Hot'' End of the Kiln

Section 63.1206(b)(13)(i) requires new and existing cement kilns to comply with a main stack hydrocarbon standard of 20 ppmv if hazardous waste is fed at a location other than the kiln end where fuels are normally fired and products are normally discharged (this is also described as the ''hot'' end of the kiln). These other locations can include firing hazardous waste at midkiln, at the upper end of the kiln where raw materials are fed, or in the calciner. In addition, if hazardous waste is fed at these other locations, the rule does not give a cement kiln the option to comply with a carbon monoxide standard in the main stack in lieu of the hydrocarbon standard.

After promulgation of the final rule, stakeholders provided additional information supporting an alternative to the mandatory monitoring location for hydrocarbons in the main stack for short, dry process cement kilns. In today's notice, we are revising the requirements of § 63.1206(b)(13) to allow short, dry process cement kilns to continuously monitor hydrocarbons in both the alkali by-pass duct and at a ''preheater tower combustion gas monitoring location'' as an alternative to hydrocarbon monitoring in the main stack.[4] In addition, we are revising the requirements of § 63.1206(b)(13) to allow short dry process cement kilns to continuously monitor both carbon monoxide in the alkali by-pass duct and hydrocarbons at a ''preheater tower combustion gas monitoring location'' under limited circumstances.

A. Why Are We Finalizing an Alternative to Hydrocarbon Monitoring in the Main Stack for Certain Cement Kilns?

At the time of the final rule, we were not aware of any short, dry process cement kilns firing hazardous waste at other locations than the kiln end where clinker product is discharged. As a result, we adopted the approach used in the Boiler and Industrial Furnace (BIF) rule[5] to control emissions of organic hazardous air pollutants from cement kilns that fire hazardous waste at these other locations as the best regulatory model. The BIF rule requires cement kilns that fire hazardous waste at locations other than the kiln end where clinker product is normally discharged to comply with a hydrocarbon limit in the main stack. Since promulgation of the rule, however, stakeholders submitted information about a new precalciner[6] cement kiln that will fire hazardous waste at locations other than the kiln end where clinker is normally discharged. One stakeholder also indicated that the main stack hydrocarbon standard may not be achievable due to hydrocarbons released from the raw materials in the upper stages of the preheater tower. Therefore, we are finalizing an alternative to main stack hydrocarbon monitoring that addresses a hazardous waste firing scenario not specifically considered during the development of the rule.

B. What Alternative to Hydrocarbon Monitoring in the Main Stack Are We Finalizing for Cement Kilns?

As an alternative to hydrocarbon monitoring in the main stack,[7] we are allowing short, dry process cement kilns to continuously comply with a hydrocarbon limit, and, under limited circumstances, a carbon monoxide limit at two separate locations within the kiln system. The two monitoring locations are: (1) In the alkali by-pass duct; and (2) in the upper stages of the preheater tower. The latter location is termed a ''preheater tower combustion gas monitoring location.'' These two locations are located downstream (in terms of gas flow) of all hazardous waste firing locations. In addition, all combustion gases pass one of these two locations.

The stakeholders claim that continuously monitoring hydrocarbons at both locations provides the best assessment of the quality of combustion and offers the same level of assurance that hazardous waste is effectively combusted as does a main stack hydrocarbon standard. Monitoring for efficient combustion of the hazardous wastes at these two locations also avoids the potential problem of hydrocarbons generated from organics in the raw materials and entrained in the gas stream.

1. Why Is Hydrocarbon Monitoring in the Alkali By-Pass Duct Appropriate?

Short, dry process cement kilns may be equipped with an alkali by-pass system where 10–30 percent of the rotary kiln combustion gas is diverted to a separate air pollution control device and sometimes to a separate stack. These kiln gases are diverted to avoid a build-up of metal salts that can adversely affect cement manufacturing operations. Hydrocarbon levels in the by-pass duct are indicative of the combustion efficiency of hazardous waste and fossil fuels fired in the rotary kiln. This is because the by-pass duct draws off combustion gases from the kiln prior to the point that hydrocarbons generated by organic materials in the raw material can be problematic.

We are finalizing a hydrocarbon standard of 10 ppmv in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns that fire hazardous waste at a location other than the kiln end that clinker product is discharged because this level is indicative of good combustion conditions in the rotary kiln. Limiting hydrocarbons to 10 ppmv in the by-pass is identical to how a cement kiln with a by-pass duct or midkiln sampling system that only feeds hazardous waste at the kiln end where clinker product is normally discharged is regulated in the final rule. See §§ 63.1204(a)(5)(i)(B) and (b)(5)(i)(A)(2). For the same reasons a hydrocarbon standard of 10 ppmv was adopted in the rule, we likewise believe a hydrocarbon standard of 10 ppmv is appropriate in this situation. See 64 FR at 52887.

In today's direct final rule, with the exception discussed below, we are not allowing new and existing short, dry process cement kilns the option to comply with a carbon monoxide standard in the alkali by-pass duct when feeding hazardous wastes at any point in the rotary kiln downstream (in terms of gas flow) of the kiln end where

[4] In today's action, we are defining ''preheater tower combustion gas monitoring location.'' See definition in § 63.1201.

[5] See 56 FR at 7158.

[6] See ''Final Technical Support Document for Hazardous Waste Combustor MACT Standards, Volume I: Description of Source Categories,'' July 1999, for a process description of precalciner cement kilns.

[7] The alternative hydrocarbon standard would not replace the hydrocarbon standard of 20 ppmv in the main stack as provided in § 63.1206(b)(13)(i). Cement kilns would continue to have the option to monitor hydrocarbons in the main stack.

clinker product is normally discharged. We do not allow this option because we do not have sufficient emissions data, using this alternative hazardous waste firing scenario, to fully evaluate the impacts. We are concerned that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted. If so, little carbon monoxide may be generated by the process and monitoring carbon monoxide alone would not ensure that hydrocarbons were minimized. Without these emissions data, we believe hydrocarbon monitoring is a more conservative, direct surrogate for control of organic hazardous air pollutants than are carbon monoxide emissions.

2. Under What Circumstances Is Monitoring of Carbon Monoxide in the Alkali By-Pass Appropriate?

There may be limited circumstances where carbon monoxide monitoring (as an option to hydrocarbon monitoring) in the alkali by-pass duct may be appropriate. An example would be a cement kiln whose only hazardous waste firing location upstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Another example would be a cement kiln that only fires hazardous waste at a location(s) downstream (in terms of gas flow) of the point where combustion gases are diverted into the alkali by-pass duct. Firing hazardous waste under these circumstances reduces our concern that organic compounds in the hazardous waste could be thermally cracked to form pyrolysis by-products rather than be completely combusted.

We are finalizing a carbon monoxide standard of 100 ppmv (as an option to hydrocarbon monitoring) in the by-pass duct (in addition to the preheater tower combustion gas monitoring location standards discussed below) for new and existing cement kilns whose only hazardous waste firing location upstream of the point where combustion gases are diverted into the alkali by-pass duct is at the kiln end where products are normally discharged. Thus, if sources feed hazardous waste at the upper end of the kiln where raw materials are fed, or any other location upstream of where gases enter the by-pass duct other than the kiln end where products are discharged, then a cement kiln would not be eligible for this option to monitor carbon monoxide instead of hydrocarbons.

We are finalizing a carbon monoxide standard of 100 ppmv for control of organic hazardous air pollutants. A level of 100 ppmv is the same level that we established in the rule for cement kilns that only fire hazardous waste at the kiln end where products are normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1). For the same reasons a carbon monoxide standard of 100 ppmv was adopted in the rule, we likewise believe the same carbon monoxide standard of 100 ppmv is appropriate in this situation. See 64 FR at 52887.

In addition, if a source elects to comply with the carbon monoxide standard in the by-pass duct, we are requiring the source to demonstrate compliance with a hydrocarbon standard of 10 ppmv in the by-pass duct during the comprehensive performance test. This is consistent with the requirements for cement kilns that comply with a carbon monoxide standard in the by-pass duct when only firing hazardous wastes at the kiln end where clinker is normally discharged. See §§ 63.1204(a)(5)(i)(A) and (b)(5)(i)(A)(1).

3. Why Is Hydrocarbon Monitoring at the ''Preheater Tower Combustion Gas Monitoring Location'' Appropriate?

Since only 10–30 percent of combustion gas is routed through the alkali by-pass duct, most short, dry process cement kilns' combustion gas travels through the cyclone stages of the preheater tower. Typically, raw material is introduced at the top of the preheater tower, which is a series of cyclones. Hot kiln flue gases move counter-current through the downward-moving raw material prior to introduction into the cement kiln. The cyclones are used to separate the raw material from the combustion gases and collected raw material sequentially is dropped into the next lower stage. Fossil and hazardous waste fuels can be fired in a calciner burner prior to the series of cyclones to further increase the raw material temperatures prior to introduction into the cement kiln.

A stakeholder identified a flue gas sampling location within the preheater tower where they believe a representative sample of combustion gas can be continuously monitored for hydrocarbons to demonstrate efficient combustion of the hazardous wastes. The stakeholder states that the preheater tower combustion gas monitoring location allows for continuous monitoring of hydrocarbons at a location downstream of the last point of hazardous waste fuel combustion, yet upstream of where non-fuel hydrocarbons from organics in the raw materials are generated and entrained in the gas stream. This location is termed a ''preheater tower combustion gas monitoring location.''

We are finalizing a hydrocarbon standard of 10 ppmv at the preheater tower combustion gas monitoring location (in addition to the alkali by-pass duct standards above) as an alternative to the main stack standard of 20 ppmv. Monitoring of hydrocarbons at the preheater tower combustion gas monitoring location is necessary to control emissions of organic hazardous air pollutants. We are finalizing a hydrocarbon standard of 10 ppmv for the same reasons discussed above for monitoring in the alkali by-pass duct. In addition, we are not allowing carbon monoxide monitoring at the preheater tower combustion gas monitoring location as an alternative to hydrocarbon monitoring for the same reasons discussed above for monitoring in the alkali by-pass duct.

VI. Alternative to the Particulate Matter Standard for Incinerators Feeding Low Levels of Metals

The final rule establishes a particulate matter emissions standard of 0.015 gr/dscf for new and existing incinerators as a surrogate to control non-mercury, CAA metal hazardous air pollutants (HAPs).[8] The rule also offers an alternative particulate matter emissions standard of 0.03 gr/dscf for incinerators that demonstrate the use of superior feedrate control of HAP metals in their hazardous waste feed. See § 63.1206(b)(14). Today, we are eliminating the alternative particulate matter emissions standard and replacing it with an alternative metal emissions control requirement. An incinerator source may elect to comply with this alternative requirement in lieu of complying with the 0.015 gr/dscf particulate matter standard. This source would remain subject to the existing standard for particulate matter in RCRA rules of 0.08 gr/dscf (a standard which would remain in the source's RCRA permit, should a source elect to comply with the alternative standard). See § 264.343(c). We are finalizing this option because we conclude that the alternative metal emissions control requirements control metal HAP emissions to levels based on MACT absent a particulate matter standard.

[8] Particulate matter is not a CAA HAP. The HWC MACT rule establishes a particulate matter standard to control non-mercury CAA HAP metals that are not directly controlled with an emission standard. See 64 FR at 52846–47.

A. Why Is EPA Eliminating the Alternative Particulate Matter Standard and Replacing It With Alternative Metal Emission Control Requirements?

We included the alternative particulate matter standard in the final rule after receiving comments that a particulate matter standard of 0.015 gr/dscf is not an appropriate surrogate to control metal hazardous air pollutants in situations where the particulate matter does not contain significant levels of metal HAPs. For example, this would include situations where the hazardous waste does not contain metals, and the resulting ash contains only relatively benign salts. (See § 63.1206(b)(14) and 64 FR 52972 for further discussion). To be eligible for the original alternative standard, incinerators must demonstrate that: (1) Non-mercury, metal HAPs are not detected in any feedstream; and (2) the maximum theoretical emission concentrations (MTEC) [9] for semivolatile and low volatile HAP metals are lower than the corresponding semivolatile and low volatile metal emission standards, assuming that non-detect metals are present at one-half the detection limit.

Based on additional information from stakeholders, we have determined that this approach did not provide the intended relief to incinerators with low levels of hazardous air pollutant metals in their feedstreams for two reasons. First, even for incinerators with very low levels of these metals in their feeds, over time metals measurements above detection limits will occasionally occur. This can occur as a result of trace metal contamination due to corrosion and/or inherent impurities in raw materials, as well as potential anomalies and variability of the analytical measurement method. Second, high detection limits that occur as a result of complex feedstream matrices may prevent a source from demonstrating that the MTECs are less than the low volatile or semivolatile metal emission standards. Because this original approach did not provide the intended relief, we are finalizing a more effective alternative to the particulate matter emission standard.

B. What Alternative Is EPA Finalizing?

In today's notice, we are allowing a source to operate under alternative HAP metal emission control requirements reflecting MACT in lieu of complying with the 0.015 gr/dscf particulate emission standard. Under the alternative, no particulate matter emission standard will apply to the incinerator under Subpart EEE; however, the incinerator will remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). This is because without a sufficiently protective particulate matter standard under Subpart EEE, we cannot defer our RCRA obligation to provide for a particulate matter requirement to Subpart EEE.[10]

The alternative to the particulate matter standard has three components. The first component is simply to meet metal emission standards for semivolatile and low volatile metals. The level of the standard is the same as that which applies to other incinerators, but the standard would apply to all HAP metals, not just those enumerated in the present semi-and low volatile metal standards. The second component is a requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT-defining metal feedrate floor control level. [11] The third component is a requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals. These components, which are described separately below, should provide for adequate control of non-mercury HAP metals in lieu of a particulate matter standard.

1. What Emission Limitation Must the Incinerator Comply With Under This Alternative?

Incinerators must comply with the same semivolatile and low volatile metal emission limitations that are specified in the final rule; however, the emission limitations apply to both enumerated *and* non-enumerated metal HAPs, excluding mercury. As discussed in the rule, enumerated metals are those metals that are directly controlled with a numerical emission standard, i.e., cadmium, lead, arsenic, beryllium, chromium. Non-enumerated metals are those metals, i.e., antimony, cobalt, manganese, nickel, and selenium that are not controlled directly with an emission standard, but are controlled through the surrogate particulate matter standard. For purposes of these alternative requirements, the non-enumerated metals are classified as either a semivolatile or a low volatile metal, and included in the calculation of compliance with the corresponding emissions limit.

For existing incinerators, the resulting emissions limits are: (1) A semivolatile emission limitation of 240 μg/dscm for the combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 μg/dscm for combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

For new sources, the resulting emissions limits are: (1) A semivolatile emission limitation of 24 μg/dscm for combined emissions of lead, cadmium, and selenium; and (2) a low volatile emission limitation of 97 μg/dscm for emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel (all emissions corrected to 7% oxygen).

We conclude it is appropriate to incorporate both the enumerated and non-enumerated metals into the semivolatile and low volatile metal emissions limits because this, in combination with the other two requirements discussed below, provides a reasonable approach to directly assure that the non-enumerated metal emissions are controlled to levels representative of MACT, in lieu of a particulate matter standard. This approach, in effect, lowers the existing semivolatile and low volatile metal emissions limits because the contribution of non-enumerated metals must be accounted for when achieving the same numerical semivolatile and low volatile emission limits. We believe this is appropriate because this effectively lower emissions limit for enumerated metals compensates for the lower emission levels that would have been achieved if the source used a particulate matter control device capable of achieving 0.015 gr/dscf, i.e., a control device that is an integral part of MACT control for semivolatile and low volatile metals. Put another way, we regard this emission limitation as an equivalent means of meeting the floor standard for HAP metals (except mercury) already established in the rule.

[9] We developed the term ''Maximum Theoretical Emissions Concentration'' to compare metals feedrates across sources of different sizes. MTEC is defined as the metals feedrate divided by the gas flowrate, and is expressed in μg/dscm.

[10] Sources electing to comply with these alternative requirements will be subject to the RCRA PM standard in their RCRA permit. The RCRA permit must include applicable operating limits that ensure compliance with the RCRA PM limit. Permit writers can impose a lower PM limit where necessary pursuant to the omnibus authority under section 3005(c)(3) of RCRA.

[11] These MACT defining feedrates are set out in ''Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies,'' Chapter 6, July 1999.

2. What Hazardous Waste Metal Feedrate Control Requirement Must the Incinerator Comply With Under This Alternative?

Each incinerator that elects to operate under these alternative requirements must demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., it complies with a defined hazardous waste metal feedrate limit that is significantly lower than the MACT-defining metal feedrate floor control level. We define ''reasonable hazardous waste metal feedrate control'' as a hazardous waste metal HAP feedrate that does not exceed 25 percent of the MACT defining MTEC level.[12] Consistent with the above discussed emission standards, the hazardous waste metal feedrate limits apply to both enumerated and non-enumerated metal HAPs. The non-enumerated metal HAPs are categorized as either semivolatile or low volatile, and are incorporated into a corresponding semivolatile or low volatile hazardous waste metal feedrate limit.[13]

For existing incinerators, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 1,325 μg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 6,000 μg/dscm.[14]

For new sources, the resulting hazardous waste metal feedrate limits are: (1) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 875 μg/dscm; and (2) the twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed 3250 μg/dscm.

We believe hazardous waste metal feedrate limits are essential parts of these alternative requirements. As discussed in the final rule preamble and in comment response documents, particulate matter control is an integral part of controlling both the enumerated and non-enumerated semivolatile and low volatile metals.[15] Therefore, any source that uses a particulate matter control technique that is less efficient than the MACT particulate floor standard should be required to use a ''better than MACT'' hazardous waste metal feedrate control (i.e., a level of feedrate control that compensates for the inefficient particulate control collection so that actual emissions of HAP metals reflect MACT). We believe that 25 percent of the MACT feedrate control levels for the combined enumerated and non-enumerated metal HAPs is within a reasonable range of values that are significantly lower than the MACT feedrate control levels. This feedrate control requirement, when combined with the emissions limit and system removal efficiency requirement, provides adequate control of metal HAPs (control equivalent to promulgated MACT).

3. How Efficient Must the Incinerator's Air Pollution Control Equipment Operate in Order To Comply With This Alternative?

If you elect to operate under these alternative requirements, you must demonstrate that the air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. Metal removal efficiency—whether measured by control of the surrogate particulate matter or directly through control of HAP metals—remains an essential element (along with feedrate control of HAP metals) of MACT for the non-mercury HAP metals, as demonstrated by the performance achievable by (and achieved by) the average of the best performing sources. In making this demonstration, you may spike semivolatile metals above 25 percent of the MACT defining MTEC level provided the emissions limits discussed above are achieved during the test. You may perform this test independently of the comprehensive performance test; however, you must use this test to establish applicable operating parameter limits as described in § 63.1209(n), excluding the § 63.1209(n)(2) metal feedrate limit requirements. These operating limits are needed to assure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations at the metal feedrates demonstrated during the test.

The 90 percent system removal efficiency requirement is based on the use of a well designed and well operated high energy venturi type wet scrubber. An analysis of hazardous waste incinerator trial burn data shows that systems with well operated and well designed venturi scrubbers have semivolatile metal system removal efficiencies ranging from approximately 90 percent to greater than 99.9 percent.[16] Thus, we are finalizing a semivolatile metal system removal efficiency of 90 percent as a conservative representation of control using a well designed and well operated high energy venturi scrubber. This method to select an appropriate control level is similar to the approach we used to develop the alternative particulate matter standard 0.03 gr/dscf that also was based on the use of well designed and well operated high energy venturi scrubbers.

System removal efficiency provides a direct indicator of the non-mercury metal HAP control efficiency of the hazardous waste incinerator system. The shift away from the use of a direct particulate matter emission standard to control non-mercury metal HAPs is a result, in part, of the reduced need for low metal feeding facilities to control particulate matter. For low metals feeding facilities, particulate matter may be composed primarily of non-metal HAP constituents such as silica, alumina, iron, etc., or HAP metals not present in hazardous waste. Thus, the control of particulate matter is not as strongly related to the control of HAP metals contributed by the hazardous waste compared with facilities which have feeds containing higher levels of those metals.

We also believe it is appropriate to require a 90 percent semivolatile metal system removal efficiency as part of these alternative requirements because,

[12] I.e., the MTEC level that was determined as a result of the aggregate feedrate analysis that was used to determine metal feedrate floor control levels in the September 30, 1999 rule.

[13] Thus, unlike the current rule where sources can choose whatever means they wish to comply with the emissions standard and so are not required to control feedrates below a regulatory level (so long as they achieve the emission standard), sources are required to comply with a specified metal feedrate limit under the alternative.

[14] These metal feedrate limits correspond to 25 percent of the MACT-defining MTEC levels. These MACT defining feedrates are set out in ''Final Technical Support Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies,'' Chapter 6, July 1999.

[15] See, for example, Table 8–1, pages 2 and 3, ''Final Technical Document for HWC Standards, Volume III: Selection of MACT Standards and Technologies,'' Chapter 3, July 1999, showing that sources with SVM feedrates below the MACT defining level but lacking proper PM control (i.e., emitting more PM than allowed by the PM standard) were unable to achieve the SVM emission standard.

[16] See Figure 4–3, ''Draft Technical Support Document for HWC MACT Standards (NODA), Volume 1: MACT Evaluations Based on Revised Database,'' April 1997.

absent a particulate matter standard, there would be no explicit requirement for sources to use an air pollution control method that effectively removes metal HAPs from the exhaust emissions.[17] This provision therefore requires sources that operate under these alternative requirements to use a particulate matter control device. Even though this control device does not have to be a MACT particulate matter control device (i.e., a control device that achieves 0.015 gr/dscf) we believe that this requirement to achieve a 90 percent system removal efficiency, when combined with the hazardous waste metal feedrate limits and emissions limits, provides for an adequate level of control for HAP metals—that is, a level of control reflecting the level of performance achieved by, and achievable by, the average of the best performing 12 percent of sources.

4. What Operating Requirements Are Associated With This Alternative?

Semivolatile and low volatile metal operating parameter limits will be established to ensure compliance with the alternative emissions limits pursuant to § 63.1209(n), except that the semivolatile and low volatile metal feedrate limits apply to both the enumerated and non-enumerated HAP metals as previously discussed. We believe this approach is consistent with the final rule methodology to assure compliance with the semivolatile and low volatile metal emission standards and should be applied here. Note that the metal feedrate limits established to ensure compliance with the alternative emissions limit are mass feedrate limits for all feedstreams, including nonhazardous feeds. This is in contrast to the hazardous waste metal feedrate limits discussed below that are based only on hazardous waste metal MTEC levels.

You must also establish operating parameter limits to ensure compliance with the 90 percent system removal efficiency requirement. Consistent with the operating limits to ensure compliance with the alternative metal emission limitations, these operating limits would be established pursuant to § 63.1209(n), except that metal feedrate limits are not required for purposes of ensuring compliance with system removal efficiency provision.

The twelve-hour rolling average hazardous waste metal feedrate limits are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as a maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate. In doing so, sources must account for each hazardous waste feedstream when determining compliance with the maximum theoretical emission concentration limits. Metal constituents not detected in hazardous waste feedstreams would be assumed to be present at one-half the detection limit when calculating the maximum theoretical emission concentration for compliance purposes, applicable to each hazardous waste feedstream.

VII. Deletion of Baghouse Inspection Requirements

Section 63.1206(c)(7)(ii) of the final rule prescribes baghouse operation and maintenance requirements for incinerators and lightweight aggregate kilns. These requirements are not applicable to cement kilns equipped with baghouses because cement kilns must continuously monitor opacity and comply with an opacity standard. Nonetheless, cement kilns are required to address baghouse operation and maintenance in the operation and maintenance plan required under § 63.1206(c)(7)(i).

The operation and maintenance requirements under § 63.1206(c)(7)(ii): (1) Prescribe the frequency of inspection of specific baghouse operations; and (2) require the use of a bag leak detector as a continuous monitor. We are today deleting the prescribed baghouse inspection requirements of § 63.1206(c)(7)(ii)(B)(1–10). Instead we will rely on the general operation and maintenance plan requirements under § 63.1206(c)(7)(i) and the use of a bag leak detector to ensure proper operation and maintenance of the baghouse.

Stakeholders question the rationale for prescribing generic inspection frequencies for various baghouse operations, given that each baghouse must be equipped with a bag leak detector. Stakeholders believe that each source should identify appropriate, site-specific inspection intervals for baghouse operations in the facility operations and maintenance plan required under § 63.1206(c)(7)(i). In particular, they highlight two burdensome inspection requirements: (1) Monthly visual inspection of the interior of the baghouse for physical integrity; and (2) monthly inspection of bags and bag connections.[18]

We agree with stakeholders that these generic provisions are unnecessary and therefore are deleting the inspection requirements of § 62.1206(c)(7)(ii)(B)(1–10). We plan to develop guidance recommendations on baghouse inspection procedures that can be used to develop appropriate inspection procedures for the operation and maintenance plan required by § 63.1206(c)(7)(i). In addition, we are deleting the requirements of § 63.1206(c)(7)(ii)(A) requiring submittal of the baghouse operations and maintenance plan to the Administrator. Given that the operation and maintenance plan required under § 63.1206(c)(7)(i) is not submitted to the Administrator for review and approval, we do not see the need to single out the baghouse operation and maintenance plan for review and approval, particularly given that sources must continuously operate a bag leak detector system.

VIII. Feedstream Analysis for Organic HAPs

Section 63.1207(f)(1)(ii) of the final rule requires sources to include in their site-specific comprehensive performance test plan an analysis of all CAA hazardous air pollutants that could reasonably be present in their feedstreams. Regulatory officials will use this analysis to ensure compliance with the destruction and removal (DRE) standards of §§ 63.1203 through 63.1205. Stakeholders raised three questions about this requirement after promulgation: (1) Did we consider the implications of requiring analysis of HAPs rather than the RCRA organic compounds on Appendix VIII, Part 261; (2) why must the test plan for periodic comprehensive performance testing include an analysis of organic HAP compounds for sources that comply with the DRE standard with a one-time test; and (3) did we intend to require analysis of organic compounds for all feedstreams or just the hazardous waste feedstreams.

A. What Are the Implications of Requiring Analysis of CAA HAPs Rather than RCRA Appendix VIII, Part 261 Organic Compounds?

For the DRE standard, the final rule requires demonstration of compliance with one or more principal organic hazardous pollutants (POHCs) selected

[17] Absent a metal system removal efficiency requirement under these alternative requirements, an incinerator could comply with the emission limitations with feedrate control only without the use of particulate matter control. This would not be appropriate if metals are present in the feedstreams because particulate matter control is an integral part of controlling metal HAP emissions.

[18] Letter from Michelle Lusk, CKRC, Thomas Nilan, CMA, and Melvin Keener, CRWI, to Elizabeth Cotsworth, EPA, Re. Multi-Industry HWC MACT Concerns and Solutions, dated March 2, 2000, p. 29 of the attachment.

from the list of HAPs established by 42 U.S.C. 7412(b)(1), excluding caprolactam. The basis for the HWC MACT DRE standard is the current RCRA requirement to ensure destruction of Appendix VIII, Part 261, organic compounds. In demonstrating compliance under RCRA, sources must select POHCs from the Appendix VIII list of organic compounds.

Stakeholders note that selecting POHCs from the list of organic CAA HAPs rather than RCRA organic compounds has several implications. Stakeholders question whether RCRA DRE test data can be used in lieu of MACT DRE testing if the POHCs selected during the RCRA test are not organic HAPs under the CAA. Stakeholders also question how to ensure DRE of organic HAPs for which thermal stability data (e.g., low oxygen thermal stability; heat of combustion) are not available. In response, we note that, to satisfy the MACT DRE standard, sources must ensure that the POHCs used to demonstrate compliance are representative of the most difficult to destroy organic compounds in their feedstream. For example, if the most difficult to destroy POHCs for RCRA DRE testing were used, those POHCs are also representative of the most difficult to destroy organic HAPs (irrespective of whether thermal stability data are available for a HAP).

B. For Sources That Comply With the DRE Standard With a One-Time Test, Why Must Their Periodic Comprehensive Performance Test Plan Include an Analysis of Organic HAP Compounds?

Section 63.1206(b)(7) allows demonstration of compliance with the DRE standard only once for the life of the source provided the source: (1) Is not modified in a manner than could affect achievability of the DRE standard; and (2) does not feed hazardous waste at a location other than the normal flame zone. Once a source has demonstrated compliance with the DRE standard, stakeholders question why analysis of waste streams for organic HAP compounds must be included with the site-specific test plan for comprehensive performance testing every five years.

The rule requires continued analyses of organic compounds with each comprehensive performance test plan to enable regulatory officials to determine whether the POHCs selected for the original DRE test continue to represent the organic HAPs being fed to the combustor. POHCs are representative of the organic HAPs fed to the combustor if they are equally or more difficult to destroy than those organic HAPs. In addition, POHCs are selected based on factors including the concentration of the organic compound in the feedstream and the toxicity of particular organic compounds.[19]

In retrospect, however, we do not believe that the comprehensive analysis required by § 63.1207(f)(1)(ii)(A)[20] is necessary in all cases to ensure that the POHCs continue to be representative of the organic HAPs being fed to the combustor. For example, if a source demonstrates compliance with the DRE standard with POHCs that represent the most difficult to destroy organic compounds, a less rigorous feedstream analysis may be appropriate to address other concerns, e.g., whether the feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic. It may also be appropriate to waive the comprehensive analysis for organic compounds based on the generator's knowledge or on a combination of waste knowledge and sampling and laboratory analysis that the POHCs selected represent the most difficult to destroy organic compounds in the waste. Accordingly, we are amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if a source documents that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams.

C. We Intended To Require Analysis of Organic HAPs in Hazardous Waste Feedstreams Only

Section 63.1207(f)(1)(ii) implies that sources must analyze all feedstreams for organic HAPs. The rule should have required analysis for hazardous waste feedstreams only. Regulatory officials will use the analysis to ensure that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. We are amending § 63.1207(f)(1)(ii) accordingly.

IX. Revisions to the Metals Feedrate Extrapolation Procedures

For sources using the metal extrapolation procedures, the final rule requires documentation that the levels of metal spiking (adding metals to the waste feed) be sufficient to demonstrate that the extrapolation procedures are as accurate and precise as if full spiking (no extrapolation) were used. See § 63.1207(f)(1)(x)(C). Today we are amending this provision to require documentation that spiking levels result in an extrapolation procedure that adequately assures compliance with the emission standard.

We included this requirement in the final rule to address the uncertainties that may be associated with extrapolating low metal feedrates, as demonstrated during testing, to higher metal feedrate limits. This documentation ensures that the uncertainties associated with the procedure are adequately addressed and that the extrapolated metal feedrate limits ensure compliance with the emission standard(s).

After discussions with stakeholders, we determined that the final rule regulatory language is too prescriptive and does not directly address our goal of assuring compliance with the emission standard. Stakeholders believe that it may not be possible to spike metals to levels such that the extrapolation procedures are as accurate and precise as if full spiking were used. They also question the accuracy and precision of the ''fully spiked'' feedstream and emissions analyses.

To address these concerns, we are requiring that sources document a level of spiking that ensures the extrapolation methodology is adequate to demonstrate compliance with the emission standard. The content and scope of this documentation should be determined on a site-specific basis, and should consider the uncertainties involved with extrapolating the tested low metal feedrates to higher metal feedrate limits. Examples of types of information that can document that the extrapolation methodology adequately assures compliance with the emission standards may include: (1) A description of the uncertainties associated with the extrapolation procedure, such as a description of the linearity of metal feedrates as compared to metal emission rates; (2) a description of the uncertainties associated with the data to be used in the extrapolation procedure;[21] and (3) the extent that

[19] In cases where an organic HAP is fed at particularly high concentrations, or where an organic HAP in the feedstream is particularly toxic, it is prudent to select such compounds as POHCs rather than relying only on surrogates that are considered to be equally or more difficult to destroy.

[20] That is, all organic HAPs except those that would not reasonably be expected to be found in the feedstream. Further, sources must identify any constituents excluded from the analysis and explain the basis for excluding them.

[21] For example, a description of the accuracy of the feedstream metal analysis considering the

Continued

these uncertainties are multiplied by the extrapolation procedure.

X. Feedrate Limits for Undetectable Constituents

The final rule requires sources to establish separate feedrate limits during the comprehensive performance test for semivolatile metals, low volatile metals, mercury, total chlorine, and/or ash for each feedstream that does not contain detectable levels of these constituents. See § 63.1207(n). The rule specifies that these separate feedrate limits must be established as ''non-detect'' feedrate limits. Under this approach, during normal operations, the feed locations that have ''non-detect'' limits cannot be fed detectable levels of the constituents unless certain criteria are met. Today, we are deleting this provision and, instead, are requiring sources to document, on a site-specific basis, the method they will use to account for non-detects when establishing feedrate limits.

We included this ''non-detect feedrate limit'' provision in the rule so sources would use a consistent methodology when establishing feedrate limits that best assures compliance with the emission standards. After discussions with stakeholders, we conclude that our approach to addressing detection limits when establishing feedrate limits is too prescriptive and that there are possibly alternative approaches that adequately assure compliance with the emission standards. Therefore, we are eliminating the requirements of § 63.1207(n) that require use of a specific method to address non-detects when establishing feedrate limits. As a replacement, we are requiring sources, on a site-specific basis, to specify in the comprehensive performance test workplan the method they will use to account for non-detects when establishing their feedrate limits. This will allow the method to be reviewed and approved by the regulatory official on a site-specific basis.

We continue to believe that the approach outlined in the final rule can be used to account for non-detects during the performance test. However, as previously mentioned, there may be alternative approaches that can be used that adequately assure compliance with the standards.[22]

We believe today's amendments to address non-detects on a site-specific basis will simplify the operating requirements for many combustors. We anticipate that regulatory officials will evaluate these site-specific approaches in part by considering: (1) Proximity of test results to the regulatory emission standard(s); (2) site-specific detection limit levels; and (3) the method or approach to address feedstream non-detects on a daily basis to demonstrate feedrate compliance. Accordingly, we are removing the requirements of § 63.1207(n) and adding § 63.1207(f)(xxvi).

XI. Revisions To Assist Early Compliance

In the final rule, we did not fully consider situations where sources would conduct performance testing prior to the compliance date. This ''early compliance'' prior to the September 30, 2002 deadline, is likely to occur to coordinate CAA and RCRA testing or to ensure the deadline for conducting the initial comprehensive performance test (i.e. 180 days after the compliance date) is met. We are particularly concerned that the regulation may inadvertently impede sources that would like to come into early compliance. Therefore, we are eliminating two impediments identified by stakeholders: (1) The requirement to stop burning hazardous waste if a source fails the comprehensive performance test; and (2) the requirement for the Documentation of Compliance.

A. When Is the Compliance Date for Sources that Comply Early?

Sources that choose to comply early are establishing a compliance date for themselves prior to the regulatory compliance date of September 30, 2002. On their compliance date, the source becomes subject to the substantive requirements of Subpart EEE. For example, on the compliance date, an exceedance of an emission standard (e.g., carbon monoxide) is a violation of the standard, and an exceedance of an operating parameter limit is evidence of failure to ensure compliance with an emission standard.

After considering the implications of early compliance, we are identifying the point at which the early complying source becomes subject to the substantive requirements of Subpart EEE as the postmark date for the Notification of Compliance (NOC). This is an appropriate point because the NOC is a legally enforceable document that contains all of the standards and operating parameters for a source complying with Subpart EEE.[23] See new § 63.1206(a)(4).

B. Sources That Fail a Comprehensive Performance Test Prior to the Compliance Date Are Not Required To Stop Burning Hazardous Waste

Section 63.1207(l) requires sources that fail a performance test for a mode of operation to stop burning hazardous waste immediately under that mode of operation. In retrospect, we conclude that this requirement is not appropriate for sources that conduct the performance test prior to the compliance date, including early complying sources, because compliance with the substantive requirements Subpart EEE is not yet triggered. Therefore, we are revising the rule accordingly. See revised § 63.1207(l)(1).

C. Early Complying Sources Would Be Exempt From the Documentation of Compliance Requirements

Section 63.1211(d) requires sources to place their Documentation of Compliance (DOC) in the operating record by the regulatory compliance date. The DOC identifies the applicable emission standards under Subpart EEE and the limits on the operating parameters under § 63.1209 that ensure compliance with those emission standards. In addition, the DOC identifies enforceable operating requirements from the compliance date until postmark of the Notification of Compliance. Given that the compliance date for early complying sources is the date the NOC is postmarked, the DOC would serve no purpose. Therefore, we are exempting early complying sources from the DOC requirement. See revised § 63.1211(d).

D. Notification of Testing for Sources That Choose To Comply Early

As with all Subpart EEE sources, those that comply early must notify permit officials of the scheduled performance test date and submit for review and approval the emissions test plan and continuous monitoring system evaluation test plan. See § 63.1207(e). Review and approval of test plans is appropriate for sources that comply early for the same reasons it is

representativeness (whether the feedstream is homogenous) of the feedstream samples if actual, unspiked feedstream metal levels are used to calculate metal feedrates.

[22] For example, separate limits for each location may not be needed to assure compliance with the standards if the detection limits are low. In this situation, a source could assume the constituent is not present in the non-detect feedstreams, or perhaps assume it is present at one-half the detection limit, and establish one total system feedrate limit instead of separate limits. This would be accomplished by adding these assumed non-detect feedrate values to the other known feedrates from the other feed locations.

[23] Sources will want to delete RCRA permit requirements that have been superseded by the Subpart EEE standards. See 64 FR at 52988. Modifying the RCRA permit precludes concerns about dual enforcement of emission standards.

appropriate for other sources—to ensure that the source's performance test plans will effectively determine whether the source is in compliance with the requirements of Subpart EEE. We encourage permit officials to review performance test plans expeditiously for sources that elect to comply early.

XII. Accuracy Requirements for Weight Measurement Devices

Section 63.1209(b)(2)(ii) specifies that the accuracy of weight measurement devices used to monitor flowrate of a feedstream must be ± 1 percent of the weight being measured. In addition, sources are required to verify the calibration of the device at least once every three months.

Stakeholders express concerns about these requirements. We concur with many of stakeholders' concerns about the accuracy requirement for weight measurement devices and are revising the rule to specify an accuracy requirement only for activated carbon feedrate measurement devices.

Stakeholders state that the ± 1 percent accuracy requirement is not appropriate for all weight measurement devices. This accuracy requirement is the same as we used in another rulemaking where it is applied only to the device used to measure carbon feedrate in an activated carbon injection system. Stakeholders state that the ± 1 percent accuracy is not achievable by many weight measurement devices, such as devices that measure the weight of raw materials.[24] Stakeholders also note that the implementation document for the boiler and industrial furnace standards under Part 266, Subpart H, lists acceptable measurement devices than cannot achieve this level of accuracy.

We agree with the stakeholders' concerns and are revising § 63.1209(b)(2)(ii) so that the accuracy requirement applies only to a carbon injection weight measurement device. Nonetheless, sources must include in the continuous monitoring system evaluation test plan the accuracy and calibration procedures for each monitor required under § 63.1209. This evaluation test plan must be submitted along with the comprehensive performance test plan for review and approval. See § 63.1207(e).

[24] For example, a clamshell bucket cannot achieve this level of accuracy for the feedstock because of the large weight of the clamshell relative to the feedstock and because some of the feedstream will stick to the bucket.

XIII. Deletion of Requirement for Establishing a Scrubber Liquid Minimum pH Operating Parameter Limit for Mercury Control for Wet Scrubbers

The final rule states that mercury emissions from hazardous waste combustors are controlled by: (1) Controlling the feedrate of mercury; (2) wet scrubbing to remove soluble mercury (e.g., mercuric chloride); and (3) carbon adsorption. There are specific operating parameter limits (OPL) that apply to each control technology.

For hazardous waste combustors using wet scrubbers to control mercury the OPLs are identical to those that are required to assure compliance with the hydrochloric acid/chlorine gas emission standard. See §§ 63.1209(l)(2) and (o)(3). We inadvertently established an inappropriate OPL requirement for mercury in developing the final rule. While a minimum pH of the scrubber water is an important parameter for chlorine control as required by § 63.1209(o)(3)(iv), it is not an appropriate OPL for mercury control. The Agency is amending the final rule by deleting the requirement for establishing a scrubber liquid minimum pH as an OPL for mercury control. Today's action does not change the requirements for hydrochloric acid and chlorine, however.

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

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

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

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

—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is a ''significant regulatory action'' because it may be considered significant under point four above: ''Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The aggregate annualized compliance costs for this rule are estimated to be less than $100 million. Furthermore, this rule is not expected to adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The benefits to human health and the environment resulting from today's final action have not been monetized but are deemed to be less than $100 million per year.

We have prepared two economic support documents for this action. These are: Assessment of Potential Costs, Benefits and Other Impacts NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments (Assessment), and, Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments. The Assessment addresses economic impacts of the thirteen direct final amendments to the September 30, 1999 final rule. The Assessment also briefly examines equity considerations and other impacts. The Regulatory Flexibility Screening Analysis (RFSA) briefly examines small entity impacts potentially resulting from this action. This Part presents a summary of findings from the Assessment and the RFSA documents. The complete Assessment and RFSA documents are available in the RCRA docket established for this action. Interested readers are encouraged to read these documents.

A. Why Is This Direct Final Rule Necessary?

The environmental regulations promulgated by EPA seek to correct market failures through the internalization of negative environmental externalities. That is not the case with today's rule. This action is necessary in order to clarify and improve compliance, testing and monitoring requirements, and general

implementation efficiency associated with the final rule NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52828, September 30, 1999).

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, ''to the extent permitted by law, and where applicable.'' The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We have already employed education and outreach programs designed to help accomplish the objectives of the amendments in this rule. We believe that, at this point, a regulatory approach will ensure appropriate technical clarification and the necessary implementation efficiency designed to fully accomplish our objectives.

C. What Regulatory Options Were Considered?

This is a direct final action that does not facilitate the assessment of alternative regulatory options.

D. What Are the Potential Costs or Cost Savings of This Direct Final Rule?

The thirteen direct final amendments presented in today's action vary considerably in scope and substance. Many of the amendments are anticipated to result in minor to negligible incremental cost impacts (savings or increases) to both the regulated community and the Agency. Three of the amendments are expected to result in more substantive cost impacts to the regulated community. These findings are briefly summarized below. The Assessment document presents a detailed review of our methodology, data, findings, and analytical limitations.

1. Deletion of One-Time Notification of Compliance with Alternative Clean Air Act Standards (Amendment II)

In the final rule, a source that is not feeding hazardous waste when the hazardous waste residence time expires may elect to comply temporarily with alternative standards promulgated under the authority of sections 112 and 129 of the Clean Air Act. If a source chooses this option, § 63.1206(b)(1)(ii)(A) requires the source to submit to the Administrator a written, one-time notification documenting compliance with those requirements and standards. Since this stipulation duplicates requirements under title V of the CAA, such a requirement is redundant.

A deletion of this requirement reduces the administrative costs associated with compliance notification. Estimates of labor costs and administrative time spent on such a task suggest that about three hours per respondent would be saved. Out of this, two hours are estimated to be technical time (costed at a rate of $55 per hour), and one hour is likely to be management time (costed at $71 per hour). All facilities are likely to benefit from this exemption, thus leading to aggregate industry-wide cost savings of approximately $31,000 per year.

2. Alternative to the PM Standard for Incinerators Feeding Low Levels of Metals (Amendment VI)

The final rule established a particulate matter emission standard of 0.015 gr/dscf for new and existing sources as a surrogate for control of non-mercury CAA metal hazardous air pollutants (HAPs). The rule also offered an alternative particulate matter emission standard of 0.03 gr/dscf for sources that demonstrate the use of superior federate control of metals in their hazardous waste. Today, we are eliminating the alternative particulate matter emission standard and replacing it with metal emissions control requirements. As a result of this amendment, no particulate matter emissions standard would apply to the incinerator under Subpart EEE. However, the incinerator would remain subject to the RCRA particulate matter standard of 0.08 gr/dscf pursuant to § 264.343(c). In addition to the 0.08 gr/dscf standard, the alternative standard requires sources to comply with the following four requirements: (1) A metal emissions limitation for semivolatile and low volatile metals that applies to all CAA HAP metals, excluding mercury; (2) A requirement for the incinerator to demonstrate that it is using reasonable hazardous waste metal feedrate control, i.e., a defined metal feedrate that is better than the MACT defining metal feedrate floor control level; (3) A requirement for the incinerator to demonstrate that its air pollution control system achieves, at a minimum, a 90 percent system removal efficiency for semivolatile metals; and (4) A set of operating requirements pursuant to § 63.1209(n).

These four components collectively provide for MACT control of non-mercury CAA metal HAPs in the absence of a MACT particulate matter standard. Hence, we believe that while this amendment would provide some reduced regulatory requirements to industry, there would be no adverse impact on the environment or any associated social costs.

The cost savings resulting from this amendment will have two components: Savings in up-front capital costs and operation and maintenance cost savings. The capital cost savings would be a result of not needing a control device that meets MACT PM control standards (i.e., a control device that achieves 0.015 gr/dscf). The unit capital cost savings for the five sources that are expected to avail themselves of this standard in a given year are estimated to be $150,000. Annualizing this amount over ten years, using a discount rate of 7 percent, gives an annual savings of approximately $21,500 for capital costs per facility.

Operation and maintenance costs for a less complex system would amount to approximately $120,000 per year per facility. These savings arise from reductions in energy usage (pressure drop devices can be very energy intensive); lower solid waste handling costs, and reduced baghouse maintenance costs. Assuming that five facilities are able to take advantage of this alternative, the total cost savings per year associated with this amendment would be approximately $707,500. It is important to note that the exact number of facilities that will take advantage of this standard is difficult to determine and is likely to change over time.

3. Feedstream Analysis Requirements for Organic HAPs (Amendment VIII)

Section 63.1207(f)(1)(ii) requires sources to include in their site-specific plan for a comprehensive performance test an analysis of all Clean Air Act hazardous air pollutants that could reasonably be present in ''the feedstream.'' Regulators would use these analyses to ensure compliance with the destruction and removal efficiency standards of §§ 63.1203 through 63.1205.

However, upon further review, we believe that the comprehensive analyses required by § 63.1206(f)(1)(ii)(A) are not necessary in all cases to ensure compliance with the DRE standard. For example, if the source can demonstrate compliance with the DRE standard using POHCs that represent the most persistent organic compounds, a less rigorous analysis may be appropriate to address other concerns, such as whether

feedstream has changed to include additional organic HAPs that are fed at high concentrations or that are particularly toxic.

We are, therefore, amending § 63.1207(f)(1)(ii) to allow regulatory officials to waive the comprehensive analysis of organic compounds if sources can document that the POHCs used to demonstrate compliance with the DRE standard continue to be representative of the organic HAPs in hazardous waste feedstreams. This amendment will result in cost savings in operation and maintenance expenses, estimated at $4,000 per facility per year. With 45 facilities expected to be affected by this amendment per year, the total annual cost savings from this effort amount to approximately $180,000.

In addition to the cost savings of $918,500 identified above we estimate that two of the thirteen amendments would result in quantifiable cost burdens to industry and the regulatory agency and/or states. These amendments are projected to result in aggregate cost increases of approximately $8,700 per year. The net aggregate cost impact associated with the thirteen amendments is estimated to be $909,800 per year. This cost impact estimate will marginally decrease the total annual social cost projection of $50 to $63 million [25] estimated for compliance with the final rule. All cost impacts are dependant upon the regional enforcement regime.

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

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

For purposes of assessing the impacts of today's direct final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (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; or (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 today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that only amendment II is likely to impact one or more of the six small hazardous waste combustors. Under our assumed worst-case scenario where the maximum cost impacts of this amendment ($31,000 savings) are attributed to only these six small sources, we find that no source would experience impacts beyond 0.14 percent of annual gross revenues.[26] This does not represent a significant economic impact.

Although this rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of this rule on small entities. Although not specifically directed toward small business outreach, we have met with industry representatives during the developmental phase and requested comment and suggestions on all aspects of this rulemaking. No small business concerns were brought up by these industry representatives.

We have completed the analysis: *Regulatory Flexibility Screening Analysis (RFSA) For NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Technical Amendments,* in support of the direct final rule. This RFSA document is available for review in the docket established for today's action.

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

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, we do not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

In addition, these amendments, as part of the HWC MACT standards, are exempt from the requirements of Executive Order 13045 because the final rule is a technology-based regulation rather than a risk-based one. Nevertheless, the amendments would not result in any incremental environmental harm that would affect children's health.

IV. Environmental Justice Executive Order 12898

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

We have no data indicating that today's rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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,

[25] U.S. Environmental Protection Agency, Office of Solid Waste, ''Addendum to the Assessment of the Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule,'' July 23, 1999.

[26] Based on the July 1999 Assessment, we found that the smallest annual firm revenue associated with the six small facilities was $3.6 million. Dividing $31,000 by the six facilities results in approximately $5,200 maximum impact per small facility. ($5,200/$3.6 million = 0.14 percent).

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 to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single 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.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any single year. It is estimated that the direct final amendments will result in increased costs to all states (or the Agency) of approximately $2,100 per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur to selected States an/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or information requests. However, this rule will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

VII. Consultation With Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action will not significantly or uniquely affect the communities of Indian tribal governments, nor will it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any hazardous waste combustion facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this rule.

VIII. Paperwork Reduction Act

We have prepared an Information Collection Request (ICR) document (ICR No. 1773.03) listing the information collection requirements of this direct final rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has assigned a control number 2050–0171 for this ICR. A copy of this ICR may be obtained from Sandy Farmer, OPIA Regulatory Information Division, U.S. Environment Protection Agency (2137), 1200 Pennsylvania Avenue NW., Washington DC 20460, or by calling (202) 260–2740.

Some of the amendments finalized today pertain to RCRA provisions of the rule (i.e., to 40 CFR parts 260 thru 271), and were covered under an earlier ICR No. 1361.08. Today's amendments to these RCRA provisions are all de-regulatory, and do not impose any burden on the regulated community. They only reduce the existing burden shown in that ICR. The ICR No. 1361.08 will be revised to show the reduced burden when the direct final rule is promulgated. The public burden associated with other provisions of this direct final rule (which are under the Clean Air Act) is projected to affect approximately 171 HWC units and is estimated to average 1.7 hours per respondent annually. The reporting and recordkeeping cost burden is estimated to average $118 per respondent annually. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

IX. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

X. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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 the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule will be effective on October 16, 2001 unless EPA receives adverse comment by August 17, 2001.

Part Four: State Authority

States can implement and enforce the new MACT standards through their delegated 112(l) CAA program and/or by having title V authority. A State's title V authority is independent of whether it has been delegated section 112(l) of the CAA. Additional information on state authority under the CAA may be found in the HWC MACT rule (64 FR at 52991).

List of Subjects

40 CFR Part 63

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

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Dated: June 18, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Section 63.1201 is amended by revising the definition of ''Hazardous waste residence time'' and adding the definition of ''Preheater tower combustion gas monitoring location'' to paragraph (a) in alphabetical order to read as follows:

§ 63.1201 Definitions and acronyms used in this subpart.

(a) * * *

Hazardous waste residence time means the time elapsed from cutoff of the flow of hazardous waste into the combustor (including, for example, the time required for liquids to flow from the cutoff valve into the combustor) until solid, liquid, and gaseous materials from the hazardous waste (excluding residues that may adhere to combustion chamber surfaces and excluding waste-derived recycled materials such as cement kiln dust and internally recycled metals) exit the combustion chamber. For combustors with multiple firing systems whereby the residence time may vary for the firing systems, the hazardous waste residence time for purposes of complying with this subpart means the longest residence time for any firing system in use at the time of the waste cutoff.

* * * * *

Preheater tower combustion gas monitoring location means a location within the preheater tower of a dry process cement kiln downstream (in terms of gas flow) of all hazardous waste firing locations and where a representative sample of combustion gas to measure combustion efficiency can be monitored.

* * * * *

3. Section 63.1206 is amended by:

a. Adding paragraph (a)(4).

b. Revising paragraphs (b)(1)(ii), (b)(6)(i), (b)(7)(i)(B), (b)(7)(ii)(B), (b)(8)(v), (b)(13)(i), and (b)(14).

c. Revising paragraph (c)(7)(ii).

The revisions and additions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2002, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(1) * * *

(ii) When hazardous waste is not in the combustion chamber (i.e., the hazardous waste feed to the combustor has been cut off for a period of time not less than the hazardous waste residence time) and you have documented in the operating record that you are complying with all otherwise applicable requirements and standards promulgated under authority of sections 112 (e.g., subpart LLL of this part for cement kilns) or 129 of the Clean Air Act in lieu of the emission standards of §§ 63.1203 through 63.1205; the monitoring and compliance standards of this section and §§ 63.1207 through 63.1209, except the modes of operation requirements of § 63.1209(q); and the notification, reporting, and recordkeeping requirements of §§ 63.1210 through 63.1212.

* * * * *

(6) * * *

(i) If a DRE test performed prior to the compliance date is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during the DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is any test for which the data and results are determined to meet quality assurance objectives (on a site-specific basis) such that the results adequately demonstrate compliance with the DRE standard.

* * * * *

(7) * * *

(i) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could effect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet quality assurance objectives determined on a site-specific basis.

(ii) * * *

(B) You may use any DRE test data that documents that your source achieves the required level of DRE provided:

(*1*) You have not modified the design or operation of your source in a manner that could affect the ability of your source to achieve the DRE standard since the DRE test was performed; and,

(*2*) The DRE test data meet the quality assurance objectives determined on a site-specific basis.

* * * * *

(8) * * *

(v) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs of all test conditions, unless more time is approved by the Administrator.

* * * * *

(13) * * *

(i) Cement kilns that feed hazardous waste at a location other than the end where products are normally discharged and where fuels are normally fired must comply with the carbon monoxide and hydrocarbon standards of § 63.1204 as follows:

(A) For existing sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(B) For new sources, you must not discharge or cause combustion gases to be emitted into the atmosphere that contain either:

(*1*) Hydrocarbons in the main stack in excess of 20 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*2*)(*i*) Hydrocarbons both in the by-pass duct and at a preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, at each location, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and

(*ii*) Hydrocarbons in the main stack, if construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane; or

(*3*)(*i*) If the only firing location of hazardous waste upstream (in terms of gas flow) of the point where combustion gases are diverted into the bypass duct is at the kiln end where products are normally discharged, then both hydrocarbons at the preheater tower combustion gas monitoring location in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, and either hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, or carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, and corrected to 7 percent oxygen. If you comply with the carbon monoxide standard of 100 parts per million by volume in the by-pass duct, then you must also not discharge or cause combustion gases to be emitted into the atmosphere that contain hydrocarbons in the by-pass duct in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane, at any time during the destruction and removal efficiency (DRE) test runs or their equivalent as provided by § 63.1207(b)(7).

(*ii*) If construction of the kiln commenced after April 19, 1996 at a plant site where a cement kiln (whether burning hazardous waste or not) did not previously exist, hydrocarbons are limited to 50 parts per million by volume, over a 30-day block average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane.

* * * * *

(14) *Alternative to the particulate matter standard for incinerators.* (i) *General.* In lieu of complying with the applicable particulate matter standard of § 63.1203(a)(7) or (b)(7), existing and new incinerators may elect to instead comply with the alternative metal emission control requirements described in paragraph (b)(14)(ii) or (b)(14)(iii) of this section, respectively.

(ii) *Alternative metal emission control requirements for existing incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 240 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the

atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iii) *Alternative metal emission control requirements for new incinerators.* (A) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain lead, cadmium, and selenium in excess of 24 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(B) You must not discharge or cause combustion gases to be emitted into the atmosphere that contain arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel in excess of 97 μg/dscm, combined emissions, corrected to 7 percent oxygen; and,

(C) You must comply with the provisions specified in paragraph (b)(14)(iv) of this section.

(iv) *Other requirements.* Existing and new incinerators must document in the operating record that they meet the requirements of paragraph (b)(14)(iv)(A) through (C) of this section.

(A) The twelve-hour rolling average of the maximum theoretical emissions concentration for lead, cadmium, and selenium, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(*1*) For existing incinerators, 1,325 μg/dscm.

(*2*) For new incinerators, 875 μg/dscm.

(B) The twelve-hour rolling average of the maximum theoretical emissions concentration for arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined, for the combined hazardous waste feedstreams to the incinerator, must not exceed:

(*1*) For existing incinerators, 6,000 μg/dscm.

(*2*) For new incinerators, 3250 μg/dscm.

(C) You must document that your air pollution control system achieves at least a 90 percent system removal efficiency for semivolatile metals. In making this demonstration, you may spike semivolatile metals above the applicable levels of paragraph (b)(14)(iv)(A) or (B) of this section provided that the applicable alternative emission limitation of paragraph (b)(14)(ii)(A) or (iii)(A) of this section is attained during the test. This test may be performed independently of the comprehensive performance test and must be used to establish applicable operating parameter limits as described in § 63.1209(n), not including § 63.1209(n)(2), to ensure that a 90 percent semivolatile metal system removal efficiency is achieved during normal operations.

(v) *Operating limits.* (A) Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits would apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits would apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

(B) Twelve-hour rolling average hazardous waste metal feedrate limits required pursuant to paragraphs (b)(14)(iv)(A) and (B) of this section are based on the combined hazardous waste feedstreams to the incinerator and may be expressed either as an maximum theoretical emission concentration limit or as a restriction on maximum hazardous waste metals mass feedrate and minimum gas flow rate.

(C) For purposes of complying with the twelve-hour rolling average hazardous waste metal feedrate limits of paragraphs (b)(14)(iv)(A) and (B) of this section, non-detectable metal constituents in each hazardous waste feed must be assumed to be present at one-half the detection limit.

(c) * * *

(7) * * *

(ii) *Bag leak detection system requirements for baghouses at lightweight aggregate kilns and incinerators.* If you own or operate a hazardous waste incinerator or hazardous waste burning lightweight aggregate kiln equipped with a baghouse (fabric filter), you must continuously operate a bag leak detection system that meets the specifications and requirements of paragraph (c)(7)(ii)(A) of this section and you must comply with the corrective measures requirements of paragraph (c)(7)(ii)(B) of this section:

(A) *Bag leak detection system specification and requirements.* (*1*) The bag leak detection system must be certified by the manufacturer to be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter or less;

(*2*) The bag leak detection system shall provide output of relative particulate matter loadings;

(*3*) The bag leak detection system shall be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(*4*) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(*5*) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(*6*) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the operation and maintenance plan required under paragraph (c)(7)(i) of this section. You must not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(*7*) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector shall be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

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

(B) *Bag leak detection system corrective measures requirements.* The operating and maintenance plan required by paragraph (c)(7)(i) of this section must include a corrective measures plan that specifies the procedures you will follow in the case of a bag leak detection system alarm. The corrective measures plan must include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective measures taken to correct the control device malfunction or minimize emissions as specified in this paragraph. Failure to initiate the corrective measures required by this paragraph is failure to ensure compliance with the emission standards in this subpart.

(*1*) You must initiate the procedures used to determine the cause of the alarm within 30 minutes of the time the alarm first sounds; and

(*2*) You must alleviate the cause of the alarm by taking the necessary corrective

measure(s) which may include, but are not to be limited to, the following measures:

(*i*) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(*ii*) Sealing off defective bags or filter media;

(*iii*) Replacing defective bags or filter media, or otherwise repairing th 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 combustor.

4. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i).

b. Revising paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), (f)(1)(ii)(C), and (f)(1)(x)(C).

c. Revising paragraph (l)(1) introductory text.

d. Redesignating paragraph (f)(1)(xxvi) as (f)(1)(xxvii).

e. Adding paragraph (f)(1)(ii)(D).

f. Adding new paragraph (f)(1)(xxvi).

g. Removing paragraph (n).

The revisions and additions read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) You may request that previous emissions test data serve as documentation of conformance with the emission standards of this subpart provided that the previous testing:

(A) Results in data that meet quality assurance objectives (determined on a site-specific basis) such that the results adequately demonstrate compliance with the applicable standards;

(B) Was in conformance with the requirements of paragraph (g)(1) of this section; and,

(C) Was sufficient to establish the applicable operating parameter limits under § 63.1209.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) Except as provided by paragraph (f)(1)(ii)(D) of this section, an identification of such organic hazardous air pollutants that are present in each hazardous waste feedstream. You need not analyze for organic hazardous air pollutants that would reasonably not be expected to be found in the feedstream. You must identify any constituents you exclude from analysis and explain the basis for excluding them. You must conduct the feedstream analysis according to § 63.1208(b)(8);

(B) An approximate quantification of such identified organic hazardous air pollutants in the hazardous waste feedstreams, within the precision produced by analytical procedures of § 63.1208(b)(8); and

(C) A description of blending procedures, if applicable, prior to firing the hazardous waste feedstream, including a detailed analysis of the materials prior to blending, and blending ratios.

(D) The Administrator may approve on a case-by-case basis a hazardous waste feedstream analysis for organic hazardous air pollutants in lieu of the analysis required under paragraph (f)(1)(ii)(A) of this section if the reduced analysis is sufficient to ensure that the POHCs used to demonstrate compliance with the applicable DRE standard of § 63.1203, § 63.1204, or § 63.1205, continue to be representative of the organic hazardous air pollutants in your hazardous waste feedstreams;

* * * * *

(x) * * *

(C) Documentation that the level of spiking recommended during the performance test will mask sampling and analysis imprecision and inaccuracy to the extent that the extrapolated feedrate limits adequately assure compliance with the emission standards;

* * * * *

(xxvi) For purposes of calculating semivolatile metal, low volatile metal, mercury, and total chlorine (organic and inorganic), and ash feedrate limits, a description of how you will handle performance test feedstream analytical results that determines these constituents are not present at detectable levels.

* * * * *

(l) * * *

(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2002 (or a later compliance date approved under § 63.6(i).

* * * * *

5. Section 63.1209 is amended by:

a. Revising paragraph (b)(2)(ii).

b. Revising paragraph (l)(2).

The revisions read as follows:

§ 63.1209 What are the monitoring requirements?

* * * * *

(b) * * *

(2) * * *

(ii) *Accuracy and calibration of weight measurement devices for activated carbon injection systems.* If you operate a carbon injection system the accuracy of the weight measurement device must be ±1 percent of the weight being measured. The calibration of the device must be verified at least once every three months.

* * * * *

(l) * * *

(2) *Wet scrubber.* If your combustor is equipped with a wet scrubber, you must establish operating parameter limits prescribed by paragraph (o)(3) of this section, except for paragraph (o)(3)(iv).

* * * * *

6. Section 63.1211 is amended by revising paragraph (c)(1) to read as follows:

§ 63.1211 What are the record keeping and reporting requirements?

* * * * *

(c) * * *

(1) By the compliance date, you must develop and include in the operating record a Documentation of Compliance. You are not subject to this requirement, however, if you submit a Notification of Compliance under § 63.1207(j) prior to the compliance date.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

8. Section 264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 264.340 Applicability.

* * * * *

(b) * * *

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter.

* * *

(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with

the alternative to the particulate matter standard of § 63.1206(b)(14) of this chapter.

* * * * *

[FR Doc. 01–16425 Filed 7–2–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 01–162]

Jurisdictional Separations Reform and Referral to the Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for implementing a five-year interim ''Freeze'' of the jurisdictional separations process in order to simplify and stabilize the separations process pending more comprehensive separations reform. We believe these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until the comprehensive reform is completed. The Report and Order in CC Docket No. 80–286 was published in the **Federal Register** on June 21, 2001. One of the rules contained information collection requirements.

DATES: Section 36.3(b), published at 66 FR 33202, June 21, 2001, was approved by the Office of Management and Budget (OMB) on June 22, 2001 and became effective on June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Eric Einhorn or Andrew Firth, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On May 21, 2001, the Commission released a Report and Order in CC Docket No. 80–286 (Order), 66 FR 33202, June 21, 2001, that took action in response to the Federal-State Joint Board on Jurisdictional Separations' recommended reforms to the jurisdictional separations process codified at part 36 of the Commission's rules, 47 CFR 36 *et seq.*, as a means to simplify and stabilize the separations process pending more comprehensive reform. Specifically, pending further reform, the Commission adopts a five-year freeze of all part 36 category relationships and jurisdictional allocation factors for price cap incumbent local exchange carriers, and a freeze of all allocation factors for rate-of-return incumbent local exchange carriers. The Commission believes these modifications will bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes, until comprehensive reform is completed. A summary of the Order was published in the **Federal Register**. See 66 FR 33202, June 21, 2001. One of the rules contained information collection requirements that required OMB approval. On June 22, 2001, OMB approved the information collections. See OMB No. 3060–0988. The rule amendments adopted by the Commission in the Order took effect on June 22, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the **Federal Register** announcing the effective date of that rule.

List of Subjects in 47 CFR Part 36

Jurisdictional separations, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–16651 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 01–1239; MM Docket No. 01–37, RM–10065]

Radio Broadcasting Services; Houston and Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 6, 2001, a document concerning the allotment of channels in the State of Alaska. In that Report and Order, the Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK–FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1. This document corrects that action to modify Station KNIK–FM to Channel 289C1, the correct channel.

EFFECTIVE DATES: July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–14017 published in the **Federal Register** of June 6, 2001, (66 FR 30335) Commission inadvertently modified the license of Ubik Corporation, licensee of Station KNIK–FM, Anchorage, Alaska, to specify operation on Channel 286C1 in lieu of Channel 287C1, rather than Channel 289C1, the correct channel.

In rule FR Doc. 01–14017, published on June 6, 2001 (66 FR 30335), make the following correction. On page 30335, in the preamble, in the first column, and in the amendment to § 73.202 in the second column, remove channel ''286C1'' and add ''289C1'' in its place.

Federal Communications Commission.

John A Karousos,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–16649 Filed 7–2–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97–81; FCC 01–171]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: The document addresses four petitions for reconsideration and/or clarification of the *MAS Report and Order.* Specifically, the Commission responds to requests for reconsideration and/or clarification of issues relating to the types of services classified as private internal, shared use and private carrier service in the private internal bands, grandfathering provisions as they relate to transfers and assignments, service area coverage of the Gulf of Mexico, operational flexibility, and other minor points that help clarify its intentions for the MAS service. In addition, the Commission makes minor changes to certain technical requirements in part 101, as well as, the current application freeze in the 928/959 megahertz (MHz) MAS bands. In this document, the Commission grants two petitions and grants a third petition, in part. The fourth petition is dismissed as moot.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Shellie Blakeney at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: