

**Authority:** 38 U.S.C. 501, 1721, and as noted in specific sections.

2. Revise the second sentence of paragraph (a)(2) and paragraph (m) of § 17.101 to read as follows:

**§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.**

(a) \* \* \*

(2) \* \* \* In addition, the charges billed for prescription drugs not administered during treatment will be the amount determined under paragraph (m) of this section. \* \* \*

\* \* \* \* \*

(m) *Charges for prescription drugs not administered during treatment.*

Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription. The actual VA cost of a drug will be the actual amount expended by the VA facility for the purchase of the specific drug. The administrative cost will be determined annually using VA's managerial cost accounting system. Under this accounting system, the average administrative cost is determined by adding the total VA national drug indirect costs (such as utilities and financial services) to the total VA national drug dispensing costs (such as labor and packaging) with the sum divided by the actual number of VA prescriptions filled nationally. Based on this accounting system, VA will determine the amount of the average administrative cost annually for the prior fiscal year (October through September) and then apply the charge at the start of the next calendar year.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2009-0027; FRL-8928-3]

RIN 2060-A094

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

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

**ACTION:** Proposed rule.

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

**DATES:** Comments must be received on or before August 10, 2009 unless a public hearing is requested by July 20, 2009. If a hearing is requested on the proposed rules, written comments must be received by August 24, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 10, 2009.

**ADDRESSES:** You may submit comments, identified by Docket ID No. EPA-HQ-OAR-2009-0027, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site:* <http://www.epa.gov/oar/docket.html>. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2009-0027 in the subject line of the message.

- *Fax:* (202) 566-9744.
- *Mail:* Area Source NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your

comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0027. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Area Source NESHAP for Asphalt Roofing Manufacturing Docket, EPA/DC,

EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

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

**SUPPLEMENTARY INFORMATION:**

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

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  - D. Unfunded Mandates Reform Act
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  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

**I. General Information**

*A. Does this action apply to me?*

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

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

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11559 of subpart AAAAAAA (NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

*B. What should I consider as I prepare my comments to EPA?*

Do not submit information containing CBI to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality

Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA-HQ-OAR-2009-0027. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*C. Where can I get a copy of this document?*

In addition to being available in the docket, an electronic copy of this proposed action will also be available

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

*D. When would a public hearing occur?*

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by July 20, 2009, we will hold a public hearing on July 24, 2009. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Ms. Christine Adams at (919) 541-5590 at least two days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

## II. Background Information for Proposed Area Source Standards

### A. What is the statutory authority and regulatory approach for the proposed standards?

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

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

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

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

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have many small businesses. Determining what constitutes GACT involves considering the control technologies and

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

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for 4 source categories listed pursuant to section 112(c)(3) and (k) by August 17, 2009 (*Sierra Club v. Johnson*, no. 01-1537, D.D.C., March 2006). Additional rulemakings will be published in separate **Federal Register** notices for the remaining source categories that are due in August 2009.

### B. What source categories are affected by the proposed standards?

We listed the asphalt processing and asphalt roofing manufacturing source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Strategy. The inclusion of this source category on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. The asphalt processing and asphalt roofing manufacturing source category was listed for its contributions toward meeting the 90 percent requirement for polycyclic organic matter in the form of polycyclic aromatic hydrocarbons (PAH).

### C. What are the production operations, emission sources, and available controls?

The two production operations for which this category was listed are: (1) The asphalt processing operation (performed in blowing stills); and (2) the roofing product manufacturing

operation, where substrates are coated with asphalt and other materials to produce various roofing products (e.g., shingles, roll roofing). The emission sources are the process vents from each of these operations.

The production operation with the largest potential to emit PAH is the processing operation. To our knowledge, all existing blowing still process vents are controlled by combustion devices that reduce total hydrocarbon (THC) emissions through thermal oxidation, which also reduces particulate matter (PM) and PAH emissions (PM is a component of THC and PAHs are components of PM). We believe that thermal oxidation controls are the only type of emission control applied to blowing stills in this source category. We did not identify any management practices that would reduce PAH emissions from the asphalt processing operation.

The other production operation with the potential to emit PAH at these facilities is the manufacturing (coating) operation. The equipment configuration of coating operations varies depending on the type of roofing product manufactured at the facility. Three types of manufacturing operations (coating line configurations) are used in the industry: (1) Lines with coaters only (these lines manufacture roofing products using inorganic substrates), (2) lines that have both saturators/wet loopers and coaters (these lines can manufacture roofing products using either inorganic or organic substrates), and (3) lines that have saturators/wet loopers only (these lines manufacture roofing products using organic substrates). Each of these manufacturing operation types have a unique emission characteristic profile.

Based on available information, we believe PM controls (e.g., fiber-bed filters, high efficiency air filters (HEAF) or, in some of cases, thermal oxidizers) are the only type of add-on emission control devices applied to the manufacturing operation equipment. While these control technologies are capable of achieving similar control efficiencies, the emissions reductions that may be achieved through use of PM controls vary depending on the PM emissions generated by the different types of equipment configurations. We did not identify any management practices that would reduce PAH emissions from the asphalt roofing manufacturing operations.

### D. What existing national standards apply to this source category?

The New Source Performance Standards (NSPS) for Asphalt

Processing and Asphalt Roofing Manufacture (40 CFR Part 60, Subpart UU) applies to “each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants” for which construction or modification commenced after November 18, 1980. The term “saturator” is defined in the NSPS to include the saturator, wet looper, and coater. Sources that are subject to the NSPS because they have blowing stills, saturators, wet loopers, or coaters that have been constructed or modified since November 18, 1980 would be subject to this proposed rule.

In addition to the asphalt NSPS, the major source NESHAP for asphalt processing and asphalt roofing manufacturing (40 CFR part 63, subpart LLLLL) regulates HAP emissions from the same types of equipment (*i.e.*, blowing stills, saturators, wet loopers, coating mixers, and coaters) covered by this proposed rule. However, area sources that would be subject to this proposed rule would not be covered by the asphalt NESHAP unless they become a major source.

### III. Summary of Proposed Standards

#### A. Do the proposed standards apply to my source?

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

#### B. When must I comply with the proposed standards?

All existing area source facilities subject to this proposed rule would be required to comply with the rule requirements no later than one year after the date of publication of the final rule in the **Federal Register**. New sources would be required to comply with the rule requirements by the date of publication of the final rule in the **Federal Register** or at startup of the facility, whichever is later.

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

#### C. What are the proposed standards?

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

For asphalt processing, the proposed standards would require the owner or operator to limit PAH emissions to 0.003 lb/ton of asphalt charged to the asphalt refining (blowing still) operation. Alternatively, owners or operators may choose to comply with a PM emissions limit of 1.2 lb/ton of asphalt charged to the asphalt refining operation. The proposed standards for new refining operations are the same as for existing sources.

For the asphalt roofing product manufacturing operations, we examined the process operations and other factors and determined that subcategories are justified to reflect the unique emission characteristic profiles of the different equipment configurations. We developed three subcategories based upon the various equipment configurations used in the industry: (1) Production lines that use a coater only, (2) production lines that use a saturator only, and (3) production lines that use saturators and coaters. See section IV.D of this preamble for a discussion of how GACT was determined.

For existing coater-only production lines, the proposed standards would require the owner or operator to limit PAH emissions from all coating mixers and coaters to 0.0002 lb/ton of product manufactured. Alternatively, owners or operators may choose to comply with a PM emission limit of 0.03 lb/ton of product manufactured.

For existing saturator-only production lines, the proposed standards would require the owner or operator to limit PAH emissions from all saturators (and wet loopers) to 0.0004 lb/ton of product manufactured. The proposed standards for saturator-only production lines would alternatively allow owners or operators to comply with a PM emissions limit of 0.05 lb/ton of product manufactured.

For existing combined saturator and coater production lines, the proposed standards would require the owner or operator to limit PAH emissions from all saturators, wet loopers, coating mixers, and coaters to 0.0006 lb/ton of product manufactured. The proposed standards for combined saturator and coater production lines would alternatively allow owners or operators to comply with a PM emissions limit of 0.07 lb/ton of product manufactured. This

alternative emission limit is at least as stringent as GACT for PAH emissions.

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

#### D. What are the initial and continuous compliance requirements?

The proposed standards would require an initial performance assessment of the process emissions or control device outlet to demonstrate initial compliance with the applicable standard, and to establish the range of parameter values (*e.g.*, temperature, pressure drop) for the process or control device that will be monitored to demonstrate continuous compliance. For existing sources, the proposed standards would require owners or operators to conduct the initial compliance assessment within 180 days of the date the final rule is published in the **Federal Register**. Owners or operators of new sources would be required to conduct compliance assessments within 180 days of the date the final rule is published in the **Federal Register** or startup (whichever is later).

Initial compliance with proposed emission limits for existing and new asphalt processing operations and asphalt roofing manufacturing lines that include a saturator must be demonstrated by conducting emission tests. For existing and new asphalt roofing manufacturing lines that do not include a saturator, the proposed standards would allow owners or operators to demonstrate initial compliance and establish continuous monitoring parameters:

- By conducting emissions tests, or
- By using process knowledge and engineering calculations.

As an alternative to conducting emission tests to demonstrate initial compliance with the asphalt processing or asphalt roofing manufacturing emission limits, an owner or operator of an existing source may use the results from an emission test conducted in the past five years. Owners or operators can use the results of the previously-conducted test only if the emission measurements were made using the test methods specified in the proposed standards. Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes.

Continuous compliance with the proposed emission limits would be demonstrated by monitoring parameters

and process conditions established during the initial compliance assessment. Under normal operating conditions (*i.e.*, periods other than startup, shutdown, and malfunction), the proposed standards for demonstrating continuous compliance are based upon a 3-hour averaging period. In cases where add-on control devices are not needed to comply with the proposed standards, facilities would be required to establish operating values for process parameters during the performance assessment and maintain the 3-hour average of those parameters within the established values. If a thermal oxidizer is used to comply with the PAH or PM emission limits, the proposed standards would require that the 3-hour average combustion zone temperature of each affected thermal oxidizer be maintained at or above the operating limit established during the performance assessment. For PM control devices, the proposed standards would require that the inlet gas temperature be maintained at or below the average 3-hour value established during the performance assessment. The pressure drop across any filter media, if used by the control device (*e.g.*, a HEAF), must also be maintained at or below the average 3-hour values established during the performance assessment. If an electrostatic precipitator (ESP) is used as the PM control device, the proposed standards would require that the 3-hour average ESP voltage be maintained at or above the operating value established during the initial performance test. For other types of controls, the proposed standards would allow the owner or operator to establish approved monitoring parameters and maintain the value of those parameters within the operating values established during the initial performance test. During periods of startup, shutdown, and malfunction, facilities would be required to comply with the proposed emission limits; however, the averaging period for determining compliance would be extended from three hours to 24 hours.

*E. What are the notification, recordkeeping, and reporting requirements?*

Affected new and existing sources would be required to comply with certain requirements set forth in the General Provisions (40 CFR part 63, subpart A), as identified in Table 5 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Among other requirements, each facility would be required to submit an initial

notification that complies with the requirements in 40 CFR 63.9(b) of the General Provisions within 120 days of the effective date of the final rule and a notification of compliance status that complies with the requirements in 40 CFR 63.9(h) within 60 days after completion of the compliance assessment. Facilities would also be required to submit semi-annual compliance summary reports.

**IV. Rationale for This Proposed Rule**

*A. How did we select the source category?*

As described in section II.B, we listed the asphalt processing and asphalt roofing manufacturing source category under CAA section 112(c)(3) on November 22, 2002 (67 FR 70427). The inclusion of this source category on the area source category list was based on data from the CAA section 112(k) inventory, which represents 1990 urban air information. The asphalt processing and asphalt roofing manufacturing area source category was listed as contributing a percentage of the total area source urban HAP emissions for PAH.

In developing the proposed standards for this source category, we relied upon information on the production operations, emission sources, and prevalent emission controls employed by area sources: (1) Obtained from the industry trade association; (2) gleaned from published literature; and (3) derived from reviewing operating permits. We also held discussions with industry representatives, State permitting organizations, and EPA experts. This research confirmed that the asphalt processing and asphalt roofing manufacturing source category emits PAH.

*B. How did we select the affected source?*

“Affected source” means the collection of equipment and processes in the source category or subcategory to which the subpart applies. We selected the affected source for this subpart based upon the processes identified in the CAA section 112(k) inventory data for this category as emitting PAH. The affected source is comprised of two operations, which are: (1) Asphalt processing (refining) operations; and (2) asphalt manufacturing (coating) operations. Some facilities conduct both of these operations, while others conduct only asphalt coating operations.

*C. How did we address PAH emissions in this rule?*

The proposed rule includes both a PAH emission limit and an equivalent PM emission limit. We have determined that it is appropriate to treat PM as a surrogate for PAH. PAH are a fractional constituent of the PM currently being controlled by affected sources. Thus, reductions in PM emissions necessarily result in proportional reductions in PAH emissions since the PM control devices used by sources in the category also effectively control PAH emissions. As we have been able to quantify the relationship between PM emissions and PAH emissions, we believe that it is appropriate to allow owners and operators to monitor and quantify PM emissions in lieu of monitoring and quantifying PAH emissions. This approach is particularly appropriate for this source category since the existing Federal regulations that cover these sources (*i.e.*, the asphalt NSPS) already require testing for PM emissions.

*D. How was GACT determined?*

As provided in CAA section 112(d)(5), we are proposing standards representing GACT to regulate PAH emissions from the asphalt processing and asphalt roofing manufacturing source category. The CAA allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

In establishing GACT, we considered the control technologies currently used by facilities in the source category that reduce PAH emissions from the refining operations and coating operations described in section II.C. of this preamble, and the costs and incremental emissions reduction achieved by more stringent controls. We were unable to identify any management practices which effectively reduced PAH emissions.

1. Asphalt processing.

Based upon the process equipment and control device configuration data supplied by the industry trade association (the Asphalt Roofing Manufacturers Association, ARMA) and data obtained through online permit database searches, all of the existing blowing stills are controlled using thermal oxidation. Thermal oxidizers at existing sources reduce PAH to 0.003 lb/ton of asphalt charged to the blowing stills. Consequently, we consider GACT

for existing blowing stills to be a PAH emissions limit of 0.003 lb/ton of asphalt charged to the blowing stills. Alternatively, the proposed standards would allow facilities to comply with an equivalent PM emissions limit of 1.2 lb/ton of asphalt charged to the blowing stills.

For new blowing stills, we are also proposing that GACT is a PAH emissions limit of 0.003 lb/ton of asphalt charged to the blowing stills, or a PM emissions limit of 1.2 lb/ton of asphalt charged to the blowing stills. Based upon the information currently available, we did not identify any technologies beyond thermal oxidation for which we would propose more stringent emission limits for new blowing stills in this source category.

## 2. Asphalt roofing manufacturing.

For roofing manufacturing operations, we estimated the baseline level of control in the industry using process equipment and control device configuration data supplied by ARMA and data obtained through online permit database searches. We also conducted a Web search and obtained operating permits for 9 non-ARMA facilities. Using the emissions data collected to support development of the asphalt NESHAP, we determined that establishing separate subcategories for coater-only, saturator-only, and combined saturator/coater production lines is appropriate to address the different types of equipment configurations. Saturators manufacture roofing products using organic substrates (e.g., felt) which require much higher asphalt application rates than coaters which are used to manufacture roofing products based upon inorganic substrates (e.g., fiberglass mat). Because of the different asphalt application rates, the emission rate of PAH and PM from a saturator is an order of magnitude higher than that from a coater.

We established the proposed emission limits indicative of GACT for each of these subcategories by applying the average reduction performance for PAH and PM emissions achieved by the controls identified at baseline for each type of process. For existing roofing production lines, we established GACT as follows for each subcategory:

- PAH emission limit of 0.0002 lb/ton of product manufactured or an alternative, equivalent PM emission limit of 0.03 lb/ton of product manufactured for coater-only lines;
- PAH emission limit of 0.0004 lb/ton of product manufactured or an alternative, equivalent PM emission limit of 0.05 lb/ton of product

manufactured for saturator-only lines; and

- PAH emission limit of 0.0006 lb/ton of product manufactured or an alternative, equivalent PM emission limit of 0.07 lb/ton of product manufactured for combined saturator/coater lines.

For new sources, we established the GACT level of control at the same level as GACT for existing sources, which reflects the use of fiber-bed or high-efficiency air filters. We considered requiring that new sources reduce PAH emission using thermal oxidizers. However, we rejected this option because of the high cost-effectiveness value (\$5,000,000/ton of PAH reduced) which is due to the very low levels of PAH emissions and the high capital and annual costs associated with thermal oxidizers, when compared to less expensive PM controls.

### *E. How did we select the compliance requirements?*

We are proposing testing, monitoring, notification, and recordkeeping requirements that are adequate to assure continuous compliance with the requirements of the rule. These provisions are based, in part, on requirements that have been applied to industries with similar control devices in other rulemakings. We selected these requirements based upon our determination of the information necessary to ensure emissions controls are maintained and operated properly on a continuing basis. We believe the proposed requirements would ensure continuous compliance with the emission reduction requirements of this proposed rule without posing a significant additional burden for facilities that must implement them.

#### 1. Asphalt Processing

We are proposing that compliance with the emission limits for blowing stills be demonstrated by monitoring the combustion zone operating temperature and maintaining the 3-hour average combustion zone operating temperature at or above the temperature established during the initial compliance demonstration.

The performance of thermal oxidizers is dictated by the turbulence and residence time of the gases in the combustion zone and by the combustion zone temperature. For a given flow rate, the turbulence and residence time are fixed properties. Therefore, the remaining parameter necessary for determining the operation of the thermal oxidizer is combustion zone temperature. Additionally, most thermal oxidizers are already equipped with

systems for monitoring and recording operating temperature. Monitoring of combustion zone temperature for blowing still thermal oxidizers is also required by the asphalt NSPS. For the initial compliance demonstration, facilities would be allowed to use the results from performance tests used to demonstrate compliance with Federal or State regulations that are at least as stringent as the proposed emission limits, provided that the performance test was conducted within the last 5 years and the test methods used were the same as the test methods specified in the proposed rule. Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes. We are proposing to allow the use of existing performance tests to reduce the potential compliance burden on asphalt area sources.

#### 2. Asphalt Roofing Manufacturing

We are proposing that compliance with the emission limits for saturators, coating mixers, and coaters using add-on controls be demonstrated by monitoring the gas temperature at the inlet of the PM control device and the pressure drop across the device. Facilities must maintain the 3-hour average inlet gas temperature and the 3-hour average pressure drop across the control device at or below the operating limits established during the initial compliance demonstration. We believe that, for this source category, the removal performance of PM control devices is adequately characterized by the inlet gas temperature and pressure drop across the device. For all PM control devices, the inlet gas temperature would have to be at or below the temperature at which the performance test was conducted to ensure that a sufficient amount of PM has condensed from the vent gas prior to entering the PM control device. The control device pressure drop would have to be at or below the value established during the performance test to ensure that the control device is providing sufficient removal of PM and that the removal mechanism (e.g., filter media) does not become plugged or fouled. Although monitoring of pressure drop is not required by the asphalt NSPS, monitoring of inlet gas temperature for PM control devices is the same as the monitoring requirements of the asphalt NSPS. This minimizes the monitoring, recordkeeping, and reporting burden on

facilities with these processes. We are also proposing to allow the use of existing performance tests for PM control devices in an effort to reduce the potential compliance burden on asphalt area sources, provided that the performance test was conducted within the last 5 years and the test methods used were the same as the test methods specified in the proposed rule.

Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes.

Facilities that can comply with the proposed standards without the use of add-on control devices must monitor approved process parameters and maintain those parameters within the range of values established during the initial performance test.

*F. How did we decide to exempt this area source category from title V permitting requirements?*

For the reasons described below, we are proposing exemption from title V permitting requirements for affected sources in the asphalt processing and asphalt roofing manufacturing area source category that are not already required to have a title V permit for other reasons. We estimate that approximately 33 of the 75 area source facilities in this industry currently have title V permits. We are not proposing that sources in this category that already have a title V permit be exempt from title V permitting requirements.

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

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring,

recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

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

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting an area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As explained below, we propose that title V permitting is unreasonably burdensome for the area source category at issue in this proposed rule. We have also determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows here.

In considering the exemption from title V requirements for sources in the category affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to

the requirements in the proposed NESHAP for the area source category. The proposed rule requires facilities to comply with an emission limit using either process changes or add-on controls. Continuous compliance would be demonstrated using parametric monitoring of the process or a control device. Facilities that can comply with the proposed standards without the use of add-on control devices must monitor approved process parameters and maintain those parameters within the range or value established during the initial performance test. For add-on control devices (*i.e.*, PM control devices and thermal oxidizers) used to comply with the emission limits, the proposed rule specifies the monitoring parameters and averaging periods. For PM control devices, the proposed standards would require that the inlet gas temperature be maintained at or below the average 3-hour value established during the performance assessment. The pressure drop across any filter media, if used by the control device, must also be maintained at or below the average 3-hour values established during the performance assessment. If an electrostatic precipitator is used as the PM control device, the proposed standards would require that the 3-hour average ESP voltage be maintained at or above the operating value established during the initial performance test. For other types of controls, the proposed standards would allow owners or operators to establish approved monitoring parameters and maintain the value of those parameters within the operating values established during the initial performance test. For thermal oxidizers, the proposed rule would require the owner or operator to maintain the 3-hour average combustion zone temperature at or above the temperature established during the initial compliance demonstration. Existing sources would be allowed to use previously conducted performance tests to demonstrate compliance provided that the tests were conducted within the past 5 years and the emission measurements were made using the test methods specified in the proposed standards.

Additionally, the owner or operator must be able to demonstrate that no process changes have been made since the date of the previous test, or that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite any process changes. New sources would be required to conduct initial performance tests.

The proposed rule also requires the preparation of a semi-annual

compliance certification report and submission of this report, which would include any deviations from the emission or operating limits that occurred during the reporting period, to the State agency. The semi-annual report would call attention to those facilities in need of inspection to the State agency in the same way as a title V permit. Records would be required to ensure that the compliance requirements are followed and that any needed corrective actions are taken. Therefore, this proposed rule contains monitoring requirements that are sufficient to assure compliance with the proposed rule.

As part of the first factor, in addition to monitoring, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6. For any affected area source in this category, this proposed rule would require an Initial Notification and a Notification of Compliance Status. In addition, owners or operators or affected facilities must maintain records that show on-going compliance with the emission limits and the established monitoring parameters. The information in the semi-annual compliance reports is consistent with the information that must be provided in the monitoring reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

We acknowledge that title V might impose additional compliance requirements on this category, but we believe the monitoring, recordkeeping, and reporting requirements of this proposed NESHAP for the asphalt processing and asphalt roofing manufacturing source category would be sufficient to assure compliance with the provisions of this NESHAP, and title V would not significantly improve those compliance requirements.

For the second factor, we determined whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was \$65,700 per source for a 5-year permit period,

including fees. See Information Collection Request for Part 70 Operating Permit Regulations, June 2007, EPA ICR Number 1587.07. EPA does not have specific estimates for the burdens and costs of permitting these specific types of area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities affected by this proposal, approximately 33 currently have title V permits leaving approximately 42 facilities that do not. Based upon the permits reviewed for this proposed rulemaking, we believe that none of the facilities that currently have title V permits are small entities. There are approximately 11 facilities owned and operated by small entities. As discussed above, title V permitting would impose significant costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. Furthermore, given the number of sources in the category that currently do not have a title V permit, it may be difficult for them to obtain sufficient assistance from the permitting authority. Thus, we conclude that factor two supports title V exemption for this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. As explained above for the second factor, the costs of compliance with title V would impose a significant burden on facilities that do not currently have title V operating permits. Although title V might impose additional requirements, we believe in considering the first factor the monitoring, recordkeeping and reporting requirements in this proposed NESHAP assure compliance with the emission standards imposed in the NESHAP as proposed. In addition, in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high for any small entity, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. EPA has implemented regulations that provide States the opportunity to take delegation of area source NESHAP, and we believe that States' delegated programs are sufficient to assure compliance with this NESHAP. See 40 CFR part 63, subpart E (States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce the NESHAP before EPA will delegate the program). We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these proposed standards. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with



these proposed standards without relying on title V permitting.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed standards without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome in this situation. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the emission standards imposed on this area source category. We further maintain that the costs of compliance with title V would impose a significant burden on the 42 facilities that do not currently have a title V permit. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V permitting were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is "unnecessarily burdensome" for this area source category.

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

Furthermore, we explained in the Exemption Rule that requiring permits for a relatively small number of area

source facilities subject to these proposed standards could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on the above analysis, we conclude that title V exemptions for these area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the reasons stated here, we are proposing to exempt this area source category from title V permitting requirements.

## V. Summary of Impacts of the Proposed Standards

### A. What are the air impacts?

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

We believe that the proposed standards codify the reductions in PAH emissions, and co-control of total HAP, THC, and PM emissions, that have been achieved by the asphalt refining and asphalt roofing manufacturing industry since 1990 by requiring compliance with the level of control that can be achieved via use of current GACT coupled with the reduced rate of asphalt used by the industry.

### B. What are the cost impacts?

We believe that all asphalt processing and asphalt roofing manufacturing facilities will be able to meet the proposed standards using existing controls; some facilities may need to conduct emission tests to demonstrate compliance. Therefore, no additional air pollution control devices would be

required. However, we have assumed that 38 facilities (50 percent) will need to install a pressure drop monitoring system for existing controls. No other capital costs are associated with this proposed rule and no new operational and maintenance costs are expected because, absent any data to demonstrate otherwise, we have assumed that existing facilities are already following the manufacturer's instructions for operation and maintenance of pollution control devices and systems.

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

The total number of labor hours for the first 3 years following promulgation in this annual cost estimate is 12,442 hours. This total includes 173 hours industry-wide for preparation of the Initial Notification in the first year and 173 hours industry-wide for preparation of the Notification of Compliance Status in the first year. The average total labor hour burden in the first year is 71 hours per facility, which include 15 hours per facility for monitoring activities.

Information on our cost impact estimates on the sources is available in the docket for this proposed rule. (See Docket ID No. EPA-HQ-OAR-2009-0027).

### C. What are the economic impacts?

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

### D. What are the non-air health, environmental, and energy impacts?

No detrimental secondary impacts are expected to occur from the asphalt processing and asphalt roofing manufacturing sources because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PAH and PM emissions collected and there are no additional energy impacts associated with the

operation of control devices or monitoring systems for the asphalt refining and asphalt roofing manufacturing sources. We expect no increase in the generation of wastewater or other water quality impacts. None of the control measures considered for this proposed rule generates a wastewater stream.

## VI. Statutory and Executive Order Reviews

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

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

### B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2352.01.

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

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

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number [EPA–HQ–OAR–2009–0027]. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 9, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by August 10, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the proposed area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 for NAICS 324122); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact all new and existing asphalt

roofing manufacturing area source facilities. We estimate that 11 facilities are owned by small entities. Although some small entities may incur capital costs to install additional monitoring equipment (*e.g.*, pressure drop monitoring system for existing controls), we have determined that small entity compliance costs, as assessed by the facilities’ cost-to-sales ratio, are expected to be less than 1 percent. The costs are so small that the impact is not expected to be significant. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next year, and consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The standards represent practices and controls that are common throughout the asphalt roofing manufacturing industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained for small businesses in the data provided by ARMA and obtained through online permit database searches, consultation with small business representatives on the State and national level, and industry representatives that are affiliated with small businesses.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action imposes no enforceable duty on any State, local, tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rules contain no requirements that apply to such governments, and impose no obligations upon them.

### E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to

ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the 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 proposed 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 proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

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

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would 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. The action imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy impacts.

#### *I. National Technology Transfer Advancement Act*

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

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

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

EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule will establish national standards for the asphalt processing and asphalt roofing manufacturing area source category.

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

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

Dated: July 2, 2009.

**Lisa P. Jackson,**  
Administrator.

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

#### **PART 63—[AMENDED]**

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

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

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

#### **Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing Applicability and Compliance Dates**

Sec.  
63.11559 Am I subject to this subpart?  
63.11560 What are my compliance dates?

#### **Standards and Compliance Requirements**

63.11561 What are my standards and management practices?  
63.11562 What are my initial compliance requirements?  
63.11563 What are my monitoring requirements?  
63.11564 What are my notification, recordkeeping, and reporting requirements?

**Other Requirements and Information**

- 63.11565 What General Provisions sections apply to this subpart?
- 63.11566 What definitions apply to this subpart?
- 63.11567 Who implements and enforces this subpart?

**Tables**

**Table 1 to Subpart AAAAAAA—Emission Limits for Asphalt Processing Operations**

**Table 2 to Subpart AAAAAAA—Emission Limits for Asphalt Roofing Manufacturing Operations**

**Table 3 to Subpart AAAAAAA—Test Methods**

**Table 4 to Subpart AAAAAAA—Operating Limits**

**Table 5 to Subpart AAAAAAA—Applicability of General Provisions to Subpart AAAAAAA**

**Applicability and Compliance Dates****§ 63.11559 Am I subject to this subpart?**

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

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

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

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

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

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

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

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

(g) On and after [Insert date of publication of the final rule in the FEDERAL REGISTER], if your asphalt processing or asphalt roofing manufacturing operation becomes a major source, as defined in § 63.2, you must meet the requirements of 40 CFR part 63, subpart LLLLL.

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

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

**§ 63.11560 What are my compliance dates?**

(a) If you own or operate an existing affected source, you must be in compliance with the applicable provisions in this subpart no later than [Insert date one year after publication of the final rule in the **Federal Register**]. As specified in § 63.11562(f), you must demonstrate initial compliance within 180 calendar days after [Insert date one year after publication of the final rule in the **Federal Register**].

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

**Standards and Compliance Requirements****§ 63.11561 What are my standards and management practices?**

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

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

(c) These standards apply at all times.

**§ 63.11562 What are my initial compliance requirements?**

(a) For asphalt processing operations, you must demonstrate compliance with the emission limits specified in Table 1 of this subpart by conducting emission tests using the methods specified in Table 3 of this subpart.

(b) For asphalt roofing manufacturing lines that include a saturator, you must demonstrate initial compliance with the applicable emission limits specified in Table 2 of this subpart by conducting

emission tests using the methods specified in Table 3 of this subpart.

(c) For asphalt roofing manufacturing lines that do not include a saturator, you must demonstrate initial compliance with the applicable emission limits specified in Table 2 of this subpart by:

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

(2) Using process knowledge and engineering calculations.

(d) During the emission tests specified in paragraphs (a), (b), and (c)(1) of this section, you must establish the value of the monitoring parameters specified in Table 4 to this subpart. If you are using process knowledge and engineering calculations to demonstrate initial compliance, as specified in paragraph (c)(2) of this section, you must identify the process parameters and corresponding parameter values that you will monitor and maintain to demonstrate continuous compliance.

(e) As an alternative to the emission testing requirement specified in paragraphs (a), (b), and (c) of this section, you may use the results of a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart for existing sources if:

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

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

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

(4) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart.

(f) For existing sources, you must demonstrate initial compliance no later than 180 calendar days after [Insert date one year after publication of the final rule in the **Federal Register**].

(g) For new sources, you must demonstrate initial compliance no later than 180 calendar days after [Insert date of publication of the final rule in the **Federal Register**] or within 180 calendar days after startup of the source, whichever is later.

(h) For emission tests conducted to demonstrate initial compliance with the emission limits specified in Tables 1 and 2, you must follow the requirements specified in paragraphs (h)(1) through (h)(5) of this section.

(1) You must conduct the tests under conditions that represent normal operation. You may not conduct performance tests during periods of

startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) You must conduct a minimum of three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). The sampling time and sample volume of each test run must be as follows:

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

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

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

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

Where:

P = asphalt charging rate to blowing still, Mg/hr (ton/hr).

V = volume of asphalt charged, m<sup>3</sup> (ft<sup>3</sup>).

d = density of asphalt, kg/m<sup>3</sup> (lb/ft<sup>3</sup>).

K' = conversion factor, 1000 kg/Mg (2000 lb/ton).

Θ = duration of test run, hr.

(ii)

$$d = K_1 - K_2 T_i$$

Where:

d = Density of the asphalt, kg/m<sup>3</sup> (lb/ft<sup>3</sup>)

K<sub>1</sub> = 1056.1 kg/m<sup>3</sup> (metric units)

= 64.70 lb/ft<sup>3</sup> (English Units)

K<sub>2</sub> = 0.6176 kg/(m<sup>3</sup> °C) (metric units)

= 0.0694 lb/(ft<sup>3</sup> °F) (English Units)

T<sub>i</sub> = temperature at the start of the blow, °C (°F)

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

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

Where:

E = emission rate of particulate matter, kg/Mg (lb/ton).

C = concentration of particulate matter, g/dscm (gr/dscf).

Q = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = asphalt roofing production rate or asphalt charging rate, Mg/hr (ton/hr).

K = conversion factor, 1000 g/kg [7000 (gr/lb)].

(5) For coating operations, you must conduct the performance test while manufacturing one of the following final products:

(i) A 106.6-kg (235-lb) shingle or mineral-surfaced roll roofing.

(ii) A 6.8-kg (15-lb) saturated felt or smooth-surfaced roll roofing.

(iii) A 100-kg (220-lb) fiberglass shingle.

### § 63.11563 What are my monitoring requirements?

(a) If you are using a control device to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must establish site-specific control device parameter values during the initial emission test and maintain those parameters as specified in Table 4 of this subpart.

(b) If you are using an emission test to demonstrate that no add-on control devices are required to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must establish site-specific process parameter values during the initial emission test and maintain those parameters as specified in Table 4 of this subpart.

(c) If you are using means other than those listed in paragraphs (a) or (b) of this section to comply with the emission limits specified in Tables 1 and 2 of this subpart, you must apply to the Administrator for approval of an alternative monitoring plan under § 63.8(f). The plan must specify how process parameters identified in the initial compliance demonstration under § 63.11562(c)(2) will be monitored and maintained to demonstrate continuous compliance.

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

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

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

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

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

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

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

(e) For each temperature monitoring device, you must meet the CPMS requirements in paragraph (d) of this section and the following:

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

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

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

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

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

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

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

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

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

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

(f) For each pressure measurement device, you must meet the CPMS requirements of paragraph (d) of this section and the following:

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

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

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

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

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

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

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

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

(g) For each electrostatic precipitator (ESP) used to control emissions, you must install and operate a CPMS to provide representative measurements of the voltage supplied to the ESP.

(h) As an alternative to installing the CPMS specified in paragraph (d) of this section, you may install a continuous emissions monitoring system (CEMS) that meets the requirements specified in § 63.8 and the applicable performance specifications of 40 CFR part 60, appendix B.

(i) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(j) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

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

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

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

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

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

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

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

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

(m) You must operate and maintain the CPMS or CEMS in continuous

operation according to the site-specific monitoring plan.

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

**§ 63.11564 What are my notification, recordkeeping, and reporting requirements?**

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

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

(2) As specified in § 63.9(b)(2), if you have an existing affected source, you must submit an Initial Notification not later than 120 calendar days after [Insert date of publication].

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

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

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

(6) If you are using data from a previously-conducted emission test to serve as documentation of conformance with the emission standards and operating limits of this subpart, you must submit the test data in lieu of the initial performance test results with the Notification of Compliance Status

required under paragraph (a)(5) of this section.

(b) You must submit a compliance report as specified in paragraphs (b)(1) through (b)(3) of this section.

(1) During periods for which there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, the compliance report must contain the information specified in paragraphs (b)(1) through (b)(1)(v) of this section.

(i) Company name and address.

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

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

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

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

(2) For each deviation from an emission limitation (emission limit and operating limit), including periods of startup, shutdown, and malfunction, you must include the information in paragraph (b)(2) of this section.

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

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

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

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

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

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

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

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

(ix) A brief description of the process units.

(x) A brief description of the CPMS or CEMS.

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

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

(3) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report in Table 4 to this subpart and according to the following dates:

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

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

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

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

(c) You must maintain the records specified in paragraphs (c)(1) through (c)(7) of this section.

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

(2) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(3) Documentation identifying the emissions limit of the compliance alternative specified in § 63.11561(c)(1) or (c)(2), if an alternative is used, and the calculations that show that the emission reductions achieved by the compliance alternative are at least as stringent as those achieved by complying with the applicable emission limits specified in § 63.11561(a) and (b).

(4) Calculations and supporting documentation that shows compliance

with the applicable emission limits specified in Table 2 of this subpart if the initial compliance demonstration is based upon process knowledge and engineering calculations as specified in § 63.11562(c)(2).

(5) Documentation that shows that the following conditions are true, if you use a previously-conducted emission test to demonstrate initial compliance as specified in § 63.11562(d):

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

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

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

(iv) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart.

(6) A copy of the approved alternative monitoring plan required under § 63.11563(c).

(7) Records required in Table 4 to this subpart to show continuous compliance with each operating limit that applies to you.

## Other Requirements and Information

### § 63.11565 What General Provisions sections apply to this subpart?

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

### § 63.11566 What definitions apply to this subpart?

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

*Asphalt coating equipment* means the saturators, coating mixers, and coaters used to apply asphalt to substrate to manufacture roofing products (e.g., shingles, roll roofing).

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

*Asphalt roofing manufacturing operation coating equipment* means the

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

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

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

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

*Responsible official* is defined in § 63.2.

*Saturator* means the equipment in which substrate (predominantly organic felt) is impregnated with asphalt. Saturators are predominantly used for the manufacture of saturated felt products. The term saturator includes the saturator and wet looper.

### § 63.11567 Who implements and enforces this subpart?

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

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

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

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

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

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

**Tables to Subpart AAAAAAA of Part 63**

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

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

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

For . . .	
1. Coater-only production lines .....	a. Limit PAH emissions to 0.0002 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.03 lb/ton of asphalt roofing product manufactured.
2. Saturator-only production lines .....	a. Limit PAH emissions to 0.0004 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.05 lb/ton of asphalt roofing product manufactured.
3. Combined saturator/coater production lines.	a. Limit PAH emissions to 0.0006 lb/ton of asphalt roofing product manufactured; or b. Limit PM emissions to 0.07 lb/ton of asphalt roofing product manufactured.

**TABLE 3 TO SUBPART AAAAAAA OF PART 63—TEST METHODS**

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

<sup>a</sup> The sampling locations must be located at the outlet of the process equipment (or control device, if applicable), prior to any releases to the atmosphere.

<sup>b</sup> When using EPA Method 23, the toluene extraction step specified in section 3.1.2.1 of the method should be omitted.

**TABLE 4 TO SUBPART AAAAAAA OF PART 63—OPERATING LIMITS**

For this type of control device . . .	You must establish an operating value for <sup>a</sup> . . .	And maintain <sup>b</sup> . . .
1. Thermal oxidizer .....	Combustion zone temperature .....	The 3-hour average combustion zone temperature at or above the operating value established during the initial emission test.
2. High-efficiency air filter or fiber bed filter.	a. Inlet gas temperature, and .....	The 3-hour average inlet gas temperature at or below the operating value established during the initial emission test.
	b. Pressure drop across device ....	The 3-hour average pressure drop across device at or below the operating value established during the initial emission test.
3. Electrostatic precipitator (ESP) ...	Voltage to the ESP .....	The 3-hour average ESP voltage at or above the operating value established during the initial emission test.
4. Process equipment management whereby no add-on control device is required.	Approved process monitoring parameters.	The monitoring parameters within the operating values established during the initial emission test.

<sup>a</sup> The operating limits specified in Table 4 are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you are using a CEMS, you must maintain emissions below the value established during the initial performance test. If you are using process modifications in lieu of a control device, you must maintain the approved process monitoring parameters below the values established during the initial performance test.

<sup>b</sup> The 3-hour averaging period applies during operating conditions other than startup, shutdown, and malfunction (SSM), as defined in § 63.2. For an hour within which an SSM event occurs, a 24-hour average may be used for all 24 hour periods that include that hour. For all periods that do not include an hour within which an SSM event occurs, the 3-hour average must be used.

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

Citation	Subject	Applies to subpart AAAAAAA
§ 63.1 .....	Applicability .....	Yes.
§ 63.2 .....	Definitions .....	Yes.
§ 63.3 .....	Units and Abbreviations .....	Yes.



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

Citation	Subject	Applies to subpart AAAAAAA
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance With Standards and Maintenance Requirements	Yes.
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(ii)–(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance with Nonopacity Emission Standards	No. The emission limits apply at all times.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7	Performance Testing Requirements	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes, if CEMS used.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No. Subpart AAAAAAA does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart AAAAAAA does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	No; § 63.11563 specifies the CMS requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes.
§ 63.8(d)	CMS Quality Control	No; § 63.11563 specifies the CMS requirements.
§ 63.8(e)–(g)	CMS Performance Evaluation	Yes.
§ 63.9	Notification Requirements	Yes.
§ 63.10	Recordkeeping and Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

[FDMS Docket No.: EPA–R04–RCRA–2008–0900; FRL–8922–2]

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion**

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

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** EPA is proposing to grant a petition submitted by The Valero

Refining Company—Tennessee, L.L.C. (Valero) to exclude or “delist” a certain sediment generated by its Memphis Refinery in Memphis, Tennessee from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the potential impact of the petitioned waste on human health and the environment. EPA bases its proposed decision to grant the petition based on an evaluation of waste-specific information provided by Valero (the petitioner). This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when the Storm Water Basin Sediment

is disposed of in a Subtitle D landfill that is permitted, licensed, or registered by a State to manage industrial solid waste.

If finalized, EPA would conclude that Valero’s petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors that would cause the waste to be hazardous.

**DATES:** EPA will accept public comments on this proposed decision until August 10, 2009. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request a hearing on this proposed decision by filing a request to EPA by July 24, 2009. The request must contain