Federal Register

Wednesday,
December 30, 2009

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0028; FRL–9095–1]

RIN 2060–AN46

National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating national emissions standards for control of hazardous air pollutants (HAP) from the chemical preparations area source category. These final emissions standards for new and existing sources reflect EPA's final determination regarding the generally available control technology or management practices (GACT) for the source category.

DATES: This final rule is effective on December 30, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0028. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in http://www.regulations.gov or in hard copy at the Area Source NESHAP for Chemical Preparations 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 (C404–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5124; fax number: (919) 541–0242; e-mail address: *johnson.warren@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. General Information

A. Does this Action Apply to Me?

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

Category	NAICS code [1]	Examples of regulated entities
All other miscellaneous chemical product and preparation manufacturing.	325998	Area source facilities that manufacture chemical preparations containing metal compounds of chromium, lead, manganese, or nickel, except for manufacturers of indelible ink, India ink, writing ink, and stamp pad ink. Chemical preparations include, but are not limited to, fluxes, water treatment chemicals, rust preventatives and plating chemicals, concrete additives, gelatin, and drilling fluids.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Chemical preparation operations described by the NAICS code 325998 that manufacture indelible ink, India ink, writing ink, and stamp pad ink are subject to area source regulations for paints and allied products (40 CFR Subpart CCCCCCC). *See* 40 CFR 63.11599. Therefore, chemical preparation operations that manufacture indelible ink, India ink, writing ink or stamp pad ink, or any combination thereof, are subject to the paints and allied products area source rule and those operations must comply all applicable requirements specified in Subpart CCCCCCC. Such operations are not subject to the final chemical preparations area source rule. To determine whether operations at your facility are regulated by this action, you should examine the applicability criteria in 40 CFR 63.11579 of subpart BBBBBBB (NESHAP for Area Sources: Chemical Preparations Industry). If you have any questions regarding the applicability of this action to a particular entity or operations at your

facility, consult either the delegated authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

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

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

C. Judicial Review

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

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

II. Background Information for This Final Rule

Section 112(d) of the CAA requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of hazardous air pollutants (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 that, 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 Integrated Urban Air Toxics 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. We also implemented these requirements through the Integrated Urban Air Toxics Strategy. A primary goal of the Integrated Urban Air Toxics 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 technology 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 almost 40 percent of firms classified as small businesses according to the Small Business Administration (SBA) standards in 13 CFR 121.201. For this source category, small businesses are defined as those with fewer than 500 employees.

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 employed by those sources are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category being considered. Finally, as noted above, in determining GACT for a particular category of area sources, we consider the costs and economic impacts of using available control technologies and management practices on sources in that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to sign final rules establishing emission standards for two source categories listed pursuant to section 112(c)(3) and (k) by December 16, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). We intend to publish a separate rulemaking in the **Federal Register** for the other source category due in December 2009.

III. Summary of Changes Since Proposal

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

- Revised the definition of chemical preparation to mean a target HAP-containing product, or intermediate used in the manufacture of other products, manufactured in a process operation described by the NAICS code 325998 if the operation manufactures target HAP-containing products or intermediates other than indelible ink, India ink, writing ink, and stamp pad ink. Indelible ink, India ink, writing ink, and stamp pad ink manufacturing operations are subject to regulation under the paints and allied products area source rule (40 CFR part 63, subpart CCCCCCC), not this rule.
- Revised the emission standard for existing sources to include an

alternative standard of 0.03 grains per dry standard cubic foot (gr/dscf) particulate matter (PM) concentration at the outlet of the control device as an alternative to routing process vent streams to a control device with a 95 percent PM reduction efficiency.

- Added standards for new sources that require either routing process vent streams to a control device with a 98 percent PM efficiency or meeting the 0.03 gr/dscf alternative standard mentioned above.
- Revised the standards to include a mechanism that allows sources (which in these standards means the collection of emission points from chemical preparations operations) to demonstrate and certify that the process vent streams in the chemical preparation operations at the facility will not exceed PM concentrations of 0.03 gr/dscf. This revision is intended to significantly reduce monitoring, recordkeeping and reporting requirements for sources that have, or can establish, very small process emissions.
- Revised the monitoring requirements to provide options for the use of bag leak detection systems, audible parameter monitor alarm systems, or a continuous parameter monitoring system (CPMS). We also removed the use of a continuous emissions monitoring systems (CEMS) as an alternative to a CPMS, since we are unaware of any existing chemical preparations area sources currently using CEMS to monitor PM emissions, and do not expect any sources to operate a CEMS system to monitor compliance with the final standards (*see* discussion in section V.E.).
- Clarified the averaging requirements for sources using a CPMS so that the average is calculated on the basis of either a 24-hour rolling period or a batch period (*i.e.,* the period that equipment is processing a batch of target HAP-containing materials), whichever is less.
- Revised the reporting requirements to require only annual reporting if no deviations occur, but semiannual reporting if a deviation occurred within the reporting period.
- Modified the inspection requirements for vent collection system ductwork that is difficult or dangerous to access.
- Revised the definition of ''responsible official'' to make it easier for sources to identify the appropriate person at a chemical preparations facility.
- Corrected a typographical error in Table 2 to specify that the PM test method is Method 5, not 5A.
- Corrected a typographical error in § 63.11585 where there were two paragraphs identified as paragraph (b).
- Clarified the definition of ''chemical preparation'' to specify that it applies to target HAP-containing products or intermediates.
- Revised the definition of ''target HAP-containing'' to clarify separate minimum concentration levels for trivalent and hexavalent chromium compounds.

IV. Summary of Final Standards

A. Do the Final Standards Apply to My Source?

The final subpart BBBBBBB standards apply to each existing and new area source chemical preparations facility, as defined in the final rule. The standards do not apply to research or laboratory facilities, as defined in section 112(c)(7) of the CAA. They also do not apply to chemical preparation operations described by the NAICS code 325998 that manufacture indelible ink, India ink, writing ink, and stamp pad ink, which are subject to area source regulations for paints and allied products (40 CFR part 63, Subpart CCCCCCC).

B. When Must I Comply With the Final Standards?

All existing area source facilities subject to this final rule are required to comply with the rule requirements no later than December 30, 2010. New sources are required to comply with the rule requirements by December 30, 2009 or upon startup of the facility, whichever is later.

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

C. What Are My Final Standards?

As we explained in the proposed rule, PM is a surrogate for the target HAP (*i.e.,* metal compounds of chromium, lead, manganese, and nickel). The final standards for existing sources require process vent streams from chemical manufacturing processes with equipment that uses, contains or contacts target HAP to either be routed to a control device with a 95 percent PM reduction efficiency or to meet an outlet concentration of 0.03 gr/dscf, with or without control. For new sources the final standards require these process vent streams to either be routed to a control device with a 98 percent PM reduction efficiency or the process vent stream must meet an outlet concentration of 0.03 gr/dscf, with or without control. On a process by process basis, if an existing source can demonstrate and certify that the PM concentration of each of the process vent streams from equipment that uses, contains or contacts target HAP within a chemical preparation operation will not exceed 0.03 gr/dscf, then the source is not required to route the process vent streams to a control device with a 95 percent PM reduction efficiency. The final rule includes appropriately reduced recordkeeping and reporting requirements for sources that can comply with the 0.03 gr/dscf alternative standard without the use of a control device.

D. What Are My Initial and Continuous Monitoring Requirements?

The final standards require an initial compliance assessment that process vent streams are either being routed to a control device with a 95 percent (98 percent for new sources) PM reduction efficiency or with an outlet PM concentration of 0.03 gr/dscf, or a certification that process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials will not exceed a PM concentration of 0.03 gr/dscf. The owner and operator must also establish parameter values (*e.g.,* liquid flow or pressure drop) for the control device that will be monitored to demonstrate continuous compliance or must install a bag system leak detection system or audible parameter monitoring alarm which indicates failure of the particulate control system.

The rule provides alternatives for demonstrating initial compliance. Specifically, initial compliance assessments to determine whether the PM percent reduction standard or outlet concentration standard are being met may consist of performance testing, control device manufacturer performance guarantees, or engineering calculations. Sources that opt to demonstrate and certify that the PM concentration of each of the process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials within a chemical preparation operation will not exceed 0.03 gr/dscf must provide either emission test data or engineering calculations to support their certification.

For existing sources, the final standards require owners or operators to conduct the initial compliance assessment by June 28, 2011. Owners or operators of new sources are required to

conduct compliance assessments by June 28, 2010 or 180 days after startup, whichever is later.

The rule provides alternative for demonstrating continuous compliance. Continuous compliance with the final emission limits is demonstrated by monitoring control device operating parameters established during the initial compliance assessment or with a bag leak detector system. For an existing source that opts to use a CPMS, the final standards for demonstrating continuous compliance are based upon an overall average per batch or over 24 hours, whichever is less, when the equipment either contains, contacts, or is processing target HAP-containing materials. As alternatives to a CPMS, sources must install either a bag leak detection system, such as a triboelectric monitor and alarm, or a parameter monitor alarm that will alert operators of periods when the device parameters (such as pressure drop or scrubber liquid flow rate) are outside the operating upper or lower threshold or range specified by the control device manufacturer.

In the final rule, sources certifying that the particulate matter concentration of each of the process vent streams from equipment that uses, contains or contacts target HAP within a chemical preparation operation will not exceed 0.03 gr/dscf have appropriately reduced duct collection system inspection requirements to ensure that the basis for the grain loading does not change. In addition, they must record material loss information that supports their certification for each subsequent quarter and must continue to operate in accordance with their certifications.

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

Affected new and existing sources are required to comply with certain reporting requirements set forth in this final rule as well as certain requirements set forth in the General Provisions (40 CFR part 63, subpart A), as identified in Tables 5 and 6 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Among other requirements, each facility is required to submit an initial notification that complies with the requirements in 40 CFR 63.9(b) of the General Provisions within 120 days of the effective date of the final rule and a notification of compliance status that complies with the requirements in 40 CFR 63.9(h) within 60 days after completion of the initial compliance assessment. Sources must keep records to identify periods when equipment contains, contacts, or is processing target HAP-containing materials, as well as records of control device performance guarantees, inspections and monitoring system calibrations for CPMS, if applicable. Facilities are also required to submit semi-annual compliance summary reports if a deviation occurs within the reporting period. If no deviation occurs, then annual compliance summary reports must be submitted.

Sources certifying that the particulate matter concentration of each of the process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials within a chemical preparation operation will not exceed 0.03 gr/dscf have appropriately reduced recordkeeping and reporting requirements.

F. What Are the Title V Permit Requirements?

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

V. Summary of Comments and Responses

During the comment period on the proposed rule, we received eleven comment letters, which were submitted by industry, small business environmental assistance programs and environmental advocacy groups. Sections V.A. through V.H. summarize some of the more significant comments and explain our response. For comment summaries and responses not addressed in this preamble, *see* the response to comment document in the docket for this rule, Docket ID No. EPA–HQ–OAR–2009–0028.

A. Source Category Listing and Applicability

Comment. Several commenters contended that EPA did not provide the opportunity to comment on the addition of the chemical preparations source category to the area source category list and that chemical preparations should not be regulated as a source category per sections 112(c)(3) and 112(k)(3)(B)(ii) of the CAA.

Response. We listed the chemical preparations source category on November 22, 2002, under CAA section 112(c)(3) in one of a series of amendments (67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy, for which there was opportunity to comment. We included this source category on the section 112(c)(3) area source category list, based upon emissions data for the 1990 baseline year, for its contribution toward meeting the CAA section 112(c)(3)'s requirement that we list sufficient categories and subcategories of sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under CAA section 112. The chemical preparations area source category was listed for its contributions toward meeting the 90 percent requirement for compounds of chromium, manganese, lead and nickel. The commenters in this case were concerned that this source category would overlap with other source categories for which they are subject. The overlap concerns are addressed in the following comment response.

Comment. Several commenters contended that the chemical preparations area source category as defined in the proposed rule overlaps with the chemical manufacturing and paint and allied products source categories and advocated that the applicability of the rule be further clarified to avoid confusion regarding which area source regulation applies to a particular operation.

Response. When the chemical preparations area source category was initially listed, it was identified as consisting of facilities covered by standard industrial classification (SIC) code 2899. We subsequently moved to the use of North American Industrial Classification System (NAICS) codes, rather than SIC codes, to identify the types of facilities included in a particular area source category. SIC codes are translated to NAICS codes using the U.S. Census Bureau's ''bridge''. The ''bridge'' correlates the four-digit SIC code to the corresponding six-digit NAICS code or codes. As discussed in the background information document for the proposal (*See* Docket EPA–HQ–OAR–2009–0028), under the ''bridge'' the 2899 SIC code translates to four separate NAICS codes (311942—Spice and extract manufacturing, 325199—All other basic organic chemical manufacturing, 325510—Paint and coating manufacturing, 325998—All other miscellaneous chemical product and preparation manufacturing). As a result,

at the time of proposal, we believed that it was possible for the chemical preparations source category to consist of operations that could be classified under one of these four possible North American Industrial Classification System (NAICS) codes, depending on the product or intermediate the operation was producing. In the proposed rule, we, therefore, identified all four categories as potentially containing sources subject to the chemical preparations area source rule. Based on comments we received on the proposal, however, we now recognize that the chemical preparations area source category as listed consists exclusively of sources classified by NAICS code 325998. (For a more detailed discussion of the circumstances, *see* the final technical support document included in the docket for this final rule.) We also realized that the NAICS code 311942, spice and extract manufacturing, is not a source of target HAP emissions, since operations conducted at facilities included in that NAICS code produce table salt and other food products. In addition, we have determined that sources in NAICS code 325999 are subject to the chemical manufacturing area source rule (40 CFR part 63, subpart VVVVVV) and that sources in NAICS code 325510 are subject to the paint and allied products area source rule (40 CFR part 63, subpart CCCCCCC). For these reasons, this final rule only applies to facilities classified by NAICS code 325998. (40 CFR 63.11579 and 63.11588.) Based on these comments, we also recognized that even within the 325998 NAICS code there was some overlap with the paint and allied products area source rule (40 CFR part 63, subpart CCCCCCC). Specifically, we recognized that sources in the 325998 NAICS code that manufacture indelible ink, India ink, writing ink, and stamp pad ink are subject to regulation under the paint and allied products area source rule. (40 CFR 63.11599) Operations at sources in the 325998 NAICS code that manufacture indelible ink, India ink, writing ink, or stamp pad ink, or any combination thereof, are, therefore, not subject to this final rule. (40 CFR 63.11579 and 63.11588.)

To facilitate these changes, the definition of ''chemical preparation'' in the final rule has been revised to read as follows:

Chemical preparation means a target HAP-containing product, or intermediate used in the manufacture of other products, manufactured in a process operation described by the NAICS code 325998 if the operation manufactures target HAP-containing products or intermediates other than indelible ink, India ink, writing ink, and stamp pad ink. Indelible ink, India ink, writing ink, and stamp pad ink manufacturing operations are subject to regulation by the paints and allied products area source rule (40 CFR part 63, subpart CCCCCCC).

B. Alternative Standards

Comment. Several commenters asked questions regarding whether their operations were subject to the rule and, presuming their operations were subject, expressed support for including an alternative compliance option based on a PM concentration. One commenter described an operation where liquids containing target HAP compounds were mixed in a closed tank. According to the commenter, PM matter is not emitted from this mixing operation. The commenter further stated that demonstrating 95 percent control would be difficult, since there were no discernable PM emissions from this operation.

Response. We agree with the commenter, and have added an alternative standard of 0.03 gr/dscf PM concentration to the final rule. Sources may either meet the requirement to route the process vent stream to a control device with a 95 percent PM reduction efficiency or the 0.03 gr/dscf PM concentration standard. Furthermore, sources demonstrating and providing a certification statement that each of the process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials within a chemical preparation operation will not exceed 0.03 gr/dscf have appropriately reduced reporting, recordkeeping and inspection requirements (to ensure that the basis for the PM concentration certification does not change).

C. GACT Limits

Comment. One commenter contends that, ''EPA failed to calculate any potential HAP reductions from the proposed rule, because the proposed rule will not actually lead to any reductions.'' The commenter believes that the proposed rule is '' * * * to preserve the status quo * * *'' and that the level of control currently in place is the accepted level of control.

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

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

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

Comment. One commenter asserted that, although section 112(d)(5) does authorize EPA to issue GACT standards in lieu of maximum achievable control

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

The commenter stated that EPA's decision to issue GACT standards pursuant to CAA section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (3), is arbitrary and capricious because EPA provided no rationale for its decision to issue GACT standards. The commenter also claimed that the proposed standards are based solely on cost and are thus unlawful and arbitrary. The commenter claims that CAA section 112(d)(5) does not direct EPA to set standards based on what is cost effective; rather, according to the commenter EPA must establish GACT based on the ''methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts.'' The commenter stated that, because cost effectiveness is not relevant under CAA section 112(d)(5), the reliance on cost effectiveness as the sole determining factor in establishing GACT renders the proposed standards unlawful.

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

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

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

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

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

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

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems. *See* Senate Report on the 1990 Amendments to the Act (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category.

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

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

In our evaluation, we determined that all of the chemical preparations operations are currently controlled with either a fabric filter or wet scrubber.

The commenter further argues that EPA inappropriately chose GACT based solely on costs, and, according to the commenter, cost is not relevant to GACT determinations and as such the standards are unlawful. We disagree. Contrary to the commenter's assertions, the Agency's consideration of cost effectiveness in establishing GACT and the Agency's views on what is a cost effective requirement under section 112(d)(5) are relevant. The U.S. Court of Appeals for the DC Circuit has stated that cost effectiveness is a reasonable measure of cost as long as the statute does not mandate a specific method of determining cost. *See Husqvarna AB* v. *EPA,* 254 F.3d 195, 201 (DC Cir. 2001) (finding that EPA's decision to consider costs on a per ton of emissions removed basis is reasonable because CAA section 213 did not mandate a specific method of cost analysis).

The commenter also failed to provide any information indicating that our cost-effectiveness determinations were unreasonable and, likewise, failed to provide any information concerning the

economic impacts associated with requiring the standards that the commenter suggests represent GACT. The commenter appears to take issue with the manner in which the Agency establishes GACT but provides no alternative approach, instead only attacking the Agency's consideration of cost (*i.e.,* cost-effectiveness) as a consideration in the establishment of GACT. The Agency proposed GACT standards for the chemical preparations area source category that were established consistent with the requirements of CAA section 112(d)(5).

Finally, even though not required, EPA did provide a rationale for why it set a GACT standard in the proposed rule. In the proposal, we explained that the facilities in the chemical preparations area source category at issue here are already well controlled for the urban HAP for which the source category was listed pursuant to section 112(c)(3). *See* 74 FR 39018 through and 39019. Consideration of costs and economic impacts is especially important for the well-controlled area sources at issue in this final action. Given the current, well-controlled emission levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for the area source category.

D. Initial Compliance

Comment. Several commenters contended that EPA proposed a very short compliance deadline for existing sources—only one year from issuance of the final rule. The commenters argue that the proposed one-year compliance deadline is premised upon EPA's assumption, which they do not agree with, that sources will not have to install or modify air pollution control or monitoring equipment to meet the standards.

Response. We generally disagree, particularly when additional flexibilities included in the final rule are considered. The comment appears to be premised on an incorrect assumption that new control devices will need to be installed to comply with the PM emission limits. We continue to believe that additional add-on controls will not be needed to comply with the final GACT standards, particularly since we revised the proposed GACT limits by providing an alternative PM concentration limit. Likewise, we have revised the proposed monitoring requirements by providing compliance alternatives for existing and new facilities. Sources may use a CPMS, a bag leak detection system or a parameter monitor alarm system that notifies the operator when the device is operating outside the manufacturer's recommended range. A bag leak detection system or parameter monitor alarm systems are significantly less complicated to install and operate than a CPMS and provide a comparable level of assurance that the source is operating in compliance with applicable requirements. Sources that already operate CPMS have the option of continuing to use their existing system to demonstrate compliance. Consequently, we believe that the proposed compliance deadline of 1 year is adequate.

E. Continuous Monitoring, Inspections and Reporting

Comment. One commenter stated that CEMS are not applicable to small chemical preparations operations.

Response. We agree with the commenter that current permit data do not support requiring CEMS for existing sources. The final rule does not contain any CEMS requirements.

Comment. Several commenters contended that the use of CPMS was uncommon at existing chemical preparations facilities, and that the costs of installing these systems were not accounted for in the proposed rule.

Response. We agree that requiring CPMS installation and operation for existing sources that do not already utilize such a system to monitor their control device's performance may not be economically feasible based upon data from the commenters. As a result, we have revised the rule so that existing and new sources can demonstrate continuous compliance through the use of any of the following: (1) A CPMS; (2) a bag leak detection system that notifies operators when a leak is detected; or (3) a parameter monitor with an audible alarm that notifies operators when a monitored control device parameter, such as pressure drop or scrubber liquid flow rate, is outside of the control device manufacturer's recommendations. Note that neither the bag leak detection system nor the parameter monitor alarm systems require a data acquisition and handling system to function properly, which, according to commenters, is the predominant portion of the cost of a CPMS.

Comment. Several commenters contended that the inspection requirements were too burdensome, arguing that the vent collection system may be difficult to access or inspect and that inspections are unnecessary because the vent collection systems are induced draft systems.

Response. We disagree that the proposed requirements are too burdensome. The required inspections are simple external visual assessments of the integrity of the collection system. This should be easily accomplished by sources. While these may be induced draft systems, we believe that they still warrant inspection. For example, an inspection can identify points along the ductwork where PM may be building up inside the duct and consequently falling out of leaks in the ductwork, indicating not only the existence of a possible leak, but that the amount of vacuum that the system was designed to induce is not being achieved. We do, however, recognize the need for inspection safety and have added provisions to the final rule that reduce inspection requirements for sections of ductwork that are deemed to be unsafe or difficult to inspect.

Comment. Several commenters contended that semiannual reporting is too burdensome for area sources and is more appropriate for major source requirements.

Response. We have revised the final rule reporting requirements so that sources must submit an annual report instead of semi-annual reports if no deviations occur. If a deviation occurs, then a semi-annual report must be submitted that summarizes the deviation and describes the corrective actions taken by the facility.

F. Title V Permitting

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

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

* * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is

impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations. *See* 42 U.S.C. section 7661a(a).

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

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

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

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

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

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

The commenter asserts that ''EPA must show that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the August 5, 2009 proposed rule for the chemical preparation area source category. Rather, we applied the four factor balancing test articulated in the Exemption Rule to this source category. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the August 5, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking.

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

Comment. One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information

from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level.

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

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

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

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

Moreover, as explained in the proposal, we considered implementation and enforcement issues in the fourth factor of the four factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. *See* 74 FR 39021.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that State-delegated programs are sufficient to assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. *See* 74 FR 39021. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources and that these additional programs will supplement and enhance the success of compliance with this NESHAP. *See* 74 FR 39021. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information indicating that States will treat information submitted under these NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, which we dispute, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of this NESHAP. Furthermore, the fourth factor is just one of the factors that we evaluated in determining if the title V requirements were unnecessarily burdensome. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemption for the chemical preparation area source category.

Comment. One commenter explained that title V provides important monitoring benefits, and, according to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for the source category. The commenter said that in its proposal EPA proposed ''using parametric monitoring'' of either process changes or add-on controls. 74 FR at 39020. The commenter further states that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the proposed rule. *Id.* At 39021. The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter stated that, for this reason as well, EPA's claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and the exemption is unlawful and arbitrary and capricious.

Response. The EPA used the four factor test to determine if title V requirements were unnecessarily burdensome for the chemical preparation area source category. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source category. *See* 70 FR 75323. It is in the context of this first factor that

EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V.

The commenter asserts that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the proposed rule.'' EPA does in fact believe that the requirements in the proposed standard, which are carried forward in this final rule, provide monitoring ''sufficient to assure compliance.'' The commenter does not provide any evidence that contradicts this conclusion.

Based on the foregoing, we considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring, recordkeeping and reporting requirements in this area source rule are sufficient to assure compliance. For the reasons described above and in the proposed rule, the first factor supports exempting this area source category from title V requirements. Further, as explained above, we determined that the factors, weighed together, support exemption of the chemical preparations area source category from title V.

Comment. According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 39021). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to any of the categories it proposes to exempt—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in these NESHAP, would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such an argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

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

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts. Rather, EPA considered potential additional compliance benefits resulting from requiring a title V permit for sources in the chemical preparations area source category and, nevertheless, concluded that requiring title V permits would be unnecessarily burdensome.

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

EPA believes that the monitoring, recordkeeping, and reporting requirements in the final rule are sufficient both to assure compliance with the requirements of the rule and to allow the public the opportunity to obtain knowledge about the source, consistent with two of the goals of title V permitting. For example, in the Initial Notification, the source must identify its size, whether it must meet any of the GACT requirements in the rule, and how it plans to comply with applicable rule requirements. The source must certify how it is complying with the rule and that it has complied with the requirements to: (1) Establish recordkeeping to demonstrate compliance with the emission limits; (2) establish monitoring of the controls as required; and, (3) establish recordkeeping regarding the parametric monitoring requirements. The source must keep records to document ongoing compliance with the emission limits finalized in this rule. The source must also submit semi-annual or annual compliance reports to the permitting agency. This information is available to the public once the source has filed the required compliance reports with the permitting agency.

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

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

Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA must consider the costs of title V permitting requirements in conjunction with any improvement in compliance above what the rule requires and, on that basis, determine whether those costs would be justified. EPA determined that approximately 40 percent (10 of the 26) of the sources that EPA believes would be subject to the chemical preparations area source rule are small businesses with limited resources. As stated in the proposal (74 FR 39021), EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. *See* Information Collection Request for Part 70 Operating Permit Regulations, 72 FR 32290, June 12, 2007, EPA ICR Number 1587.07. Based on this information, EPA determined that there is a significant cost burden to the industry to require title V permitting for all the sources subject to the rule. In addition, in analyzing factor one, EPA found that imposition of the title V requirements offers no significant improvements in compliance. In considering the third

factor, we stated in part that, ''Because the costs, both economic and non-economic, of compliance with title V are high for any small entity, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.'' *See* 74 FR 39021.

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

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

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

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

Furthermore, we disagree that the basis for excluding the chemical preparations area source category from title V requirements is generally applicable to any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the chemical preparations area source category. For example, in assessing whether the costs of requiring the sources to obtain a title V permit was burdensome, we concluded that, because approximately 40 percent (10 of the 26) of the sources were small businesses with limited resource, the costs imposed on the source category were significant compared to the additional compliance benefits offered by the title V permitting process.

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

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

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

Response. Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' *See* CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome,''

as requiring consideration of the four factors discussed above. EPA applied these four factors to the chemical preparations area source category and concluded that requiring title V for this area source category would be unnecessarily burdensome.

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

G. Cost Impacts

Comment. Several commenters stated that compliance costs are underestimated for sources that currently do not have monitoring systems and/or controls.

Response. We generally disagree, particularly considering additional flexibilities that are included in the final rule. The commenter's assertion appears to be premised on the commenters' assumption that sources will need to install new control devices. As we indicated in the proposed rule, we do not believe that this will be the case. Further, with the inclusion of the alternative 0.03 gr/dscf PM standard, along with the options for demonstrating ongoing compliance other than CPMS available in the final rule, we believe that no new capital costs should be factored into the analysis. As such, we believe that the compliance costs previously estimated for the proposed rule are a reasonable estimate of the cost of complying with this rule.

H. Miscellaneous

Comment. One commenter requested that EPA be more specific as to the chemical by giving a chemical abstracts service (CAS) number. According to the commenter, this will make it more specific and direct (*i.e.*, is trivalent chromium applicable as chromium or not). The commenter proceeds to say that giving the CAS numbers and stating the fact that only these specific CAS numbers are applicable to the rule would clarify applicability. The commenter, along with another commenter, also questioned whether there are distinctions between trivalent and hexavalent chromium compounds in the rule. One commenter noted that the *de minimis* thresholds are different in OSHA requirements and the Toxics Release Inventory's (TRI's) reporting requirements. Several commenters asked, in general, whether there were going to be *de minimis* exemptions provided in the applicability requirements of the rule.

Response. The CAA specifically lists ''chromium compounds'' as a hazardous air pollutant. In our original listing for the Urban Air Toxics Strategy (64 FR 38706, July 19, 1999), we listed ''chromium compounds'' as one of the Urban HAP targeted for the Integrated Urban Air Toxics Strategy. CAA section 112(c)(3) requires us to list source categories accounting for 90 percent of the emissions of each of the listed urban HAP, including chromium compounds. As explained above, we need the chemical preparations area source category at issue here to reach the 90 percent requirement in CAA section 112(c)(3) for chromium compounds. Many of our control strategies for chromium and other metal HAP involve the use of PM as a surrogate for chromium and other metal HAP. These PM control strategies control all chromium compounds along with PM and other metal HAP, therefore the form of chromium would not change the type of PM control strategy we choose. In summary, although we recognize the differences in the health effects of hexavalent and trivalent chromium, we are required to regulate chromium compounds from the chemical preparations area source category at issue in this rule.

As we have pointed out in several other area source rulemakings, the CAA section 112(k) inventory was primarily based on the 1990 TRI, and that is the case for the chemical manufacturing area source categories as well. The reporting requirements for the TRI do not include *de minimis* concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. *See* 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the percentages noted in the definition of ''target HAP-containing'' define the scope of the listed source category; they are not exemptions.

To address the potential for inconsistency with reporting requirements, we have revised the definition of ''target HAP-containing'' to reflect the different thresholds for trivalent and hexavalent chromium compounds as follows:

Target HAP-containing means raw materials, intermediates, or products that contain one or more target HAP. Any material that contains compounds of chromium (VI), lead, or nickel in amounts greater than or equal to 0.1 percent by weight (as the metal), or manganese or chromium (III) compounds in amounts greater than or equal to 1.0 percent by weight (as the metal) is considered to be target HAP-containing. Target HAP content is shown in the formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

Comment. One commenter suggested that the term ''responsible official'' be defined in the rule, believing that plant manager at some smaller plants may not qualify as a ''responsible official'' according to the General Provisions. According to the commenter, this would result in facilities having the additional burden of requesting delegation of this through an implementing agency. The commenter suggests following the approach and definition used in the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities Regulation (''Dry Cleaning NESHAP,'' 40 CFR part 63, subpart M).

Response. We agree with the commenter that there may be unnecessary burdens associated with the requirements for delegation of ''responsible official,'' as set forth in the General Provisions, for small facilities affected by the rule. The approach utilized by 40 CFR part 63, subpart M seems to be appropriate for the chemical preparations area source category also. Therefore, we have revised the definition of ''responsible official'' in the final regulation to be more consistent with the definition used in the Dry Cleaning NESHAP.

VI. Impacts of the Final Standards

A. What Are the Air Impacts?

Since 1990, the performance of the PM control technology utilized by the

chemical preparations industry has not advanced significantly. We believe, however, that market forces, such as the economic benefits inherent in minimizing raw material or product losses from dust emissions, have encouraged widespread use of these controls. Further, improvements in formulations of products produced by the chemical preparations industry, such as reduction or elimination of lead chromate in certain products, have enabled the industry to further reduce their air impacts. Therefore, while this final rule does not require air emission reductions from existing sources beyond those currently being achieved by such sources, we believe that this final rule reflects significant reductions in emissions since 1990 based on the use of effective PM control technology and ensures that affected sources maintain and operate the control equipment such that the performance level is maintained.

B. What Are the Cost Impacts?

All existing chemical preparations industry facilities are expected to currently be achieving the level of control required by the final standards. That is, we believe that all existing sources currently either route vent streams from specified equipment that use target HAP to a control device with a 95 percent PM reduction efficiency, or have an outlet PM concentration at or below 0.03 gr/dscf. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any cost impacts for new sources. Therefore, no additional air pollution control devices would be required. No other capital costs are associated with this final rule and no operational and maintenance costs are expected because we believe that facilities are already following the manufacturer's instructions for proper operation and maintenance of pollution control devices and vent collection systems.

The annual cost of monitoring (including inspections), reporting, and recordkeeping for this final rule is estimated to be approximately $6,800 per facility per year after the first year. The costs are, therefore, expected to be less than 1 percent of revenues. The annual estimate includes 20 hours per facility per year for preparing semiannual compliance reports, which are required only if a deviation occurs. Sources with no deviations to report must submit annual compliance reports, which would result in less burden than estimated.

The additional cost of one-time activities during the first year of compliance is estimated to be approximately $2,400 per facility. This includes labor hours for reading and understanding the rule, preparation of the Initial Notification of Applicability, preparation of the Notification of Compliance Status, development of a record system, and personnel training, for an industry-wide average estimate of approximately 32 hours per facility in the first year for one-time activities. The resulting total hours for one-time activities, ongoing inspections, recordkeeping and semiannual compliance reporting (assumes worst-case scenario where a deviation occurs) activities for the first year of compliance are 113 hours per facility.

Information on our cost impact estimates on the sources in the chemical preparations area source category is available in the docket for this final rule. (*See* Docket ID No. EPA–HQ–OAR–2009–0028).

C. What Are the Economic Impacts?

The only measurable costs attributable to these final standards are associated with the monitoring, recordkeeping, and reporting requirements. These final standards are estimated to impact a total of 26 area source facilities. We estimate that approximately 40 percent (10 of 26) of these facilities are small entities as defined by the SBA. Our analysis indicates that compliance with this final rule would not have a significant adverse impact on any facilities, large or small, since these costs are less than 1 percent of revenues for each facility.

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

No detrimental secondary impacts are expected to occur from compliance with the final rule by chemical preparations industry sources because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PM emissions collected and there are no additional energy impacts associated with the operation of control devices at chemical preparations industry sources. We expect no increase in the generation of wastewater or other water quality impacts.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that 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 Executive Order 12866 and any changes made in response to the OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

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

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

This final NESHAP requires chemical preparations area sources to submit an Initial Notification of Applicability and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A) and to conduct continuous parametric monitoring (*e.g.,* device parameter alarm), conduct vent collection system and control device inspections and submit semi-annual or annual compliance reports (as applicable).

The total annual burden for this information collection averaged over the first three years of this ICR is estimated to be 2,372 labor hours per year at a labor cost of approximately $176,000 or approximately $6,800 per facility. The total average burden is approximately 91 hours per facility per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. EPA displays OMB control numbers in various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other

appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that is engaged in the manufacturing of chemical preparations as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is estimated to impact all new and 26 existing chemical preparations area source facilities. We estimate that 10 of these facilities may be small entities. 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 final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to minimize the impact of this final rule on small entities. The standards represent practices and controls that are common throughout the chemical preparations 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 from consultation with small business representatives at the State and national level and industry representatives that are affiliated with small businesses.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total annual cost of the rule is estimated at $183,000/yr. This final rule is not expected to impact State, local, or Tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not impose any requirements on State and local governments and therefore creates no substantial direct effects on the States. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did solicit comment from State program officials and consulted with representatives of State governments in developing this action. A summary of these comments and EPA's response to these comments is provided in section V of this preamble.

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

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

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

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

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this final rule will not likely have any significant adverse energy effects because no additional pollution controls or other equipment that consume energy will be needed to comply with the final rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 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 final rulemaking involves technical standards. EPA has decided to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, and 5. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus

standards in addition to these EPA methods. The search identified 16 voluntary consensus standards that were potentially applicable for this rule in lieu of EPA reference methods. EPA has decided to use ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' as an acceptable alternative to EPA Method 3B. EPA determined the 15 other candidate VCS (ASTM D3154–00 (2006), ASTM D3464–96 (2007), ASTM D3796–90 (2004), ISO 10780:1994, ASME B133.9–1994 (2001), ANSI/ASME PTC 19–10–1981 Part 10, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835–95 (2007), ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), ISO 9096:1992 (2003), ANSI/ASME PTC–38–1980 (1985), ASTM D3685/D3685M–98 (2005), CAN/CSA Z223.1–M1977) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 5.

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

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

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

EPA has determined that this final 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective December 30, 2009.

List of Subjects in 40 CFR Part 63

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

Dated: December 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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 BBBBBBB to read as follows:

Subpart BBBBBBB—National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

Sec.

Applicability and Compliance Dates

Standards and Compliance Requirements

Other Requirements and Information

Tables of Subpart BBBBBBB of Part 63

Subpart BBBBBBB—National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

Applicability and Compliance Dates

§ 63.11579 Am I subject to this subpart?

(a) You are subject to this subpart if you meet all of the following conditions:

(1) You own or operate a chemical preparations facility (as defined in § 63.11588, ''What definitions apply to this subpart?''),

(2) The chemical preparations facility is a stationary area source of hazardous air pollutants (HAP) (as defined in § 63.2), and

(3) The chemical preparations facility has at least one chemical preparations operation in target HAP service (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(b) The affected source is all chemical preparations operations (as defined in § 63.11588, ''What definitions apply to this subpart?'') located at a facility that meets the criteria specified in paragraph (a) of this section.

(1) An affected source is existing if you commenced construction, as defined in § 63.2, of the affected source before August 5, 2009.

(2) An affected source is new if you commenced construction or reconstruction, as defined in § 63.2, of the affected source on or after August 5, 2009.

(c) On and after December 30, 2009, if your chemical preparations operation becomes a major source, as defined in § 63.2, you must continue to meet the requirements of this subpart in addition to any maximum achievable control technology standards which may apply at that time.

(d) This subpart does not apply to research and development facilities, as

defined in section 112(c)(7) of the Clean Air Act.

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

(f) You are exempt from the requirements specified in this subpart if the chemical preparations operations at your facility are subject to the requirements specified in subpart VVVVVV or subpart CCCCCCC of this part.

§ 63.11580 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than December 30, 2010.

(b) If you start up a new affected source on or before December 30, 2009, you must achieve compliance with this subpart no later than December 30, 2009.

(c) If you start up a new affected source after December 30, 2009, you must achieve compliance with this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11581 What are my standards?

You must meet one of the requirements in paragraph (a) or (b) of this section that apply to you. These standards apply at all times.

(a) You must meet one of the emission standards in Table 1 of this subpart and the management practices in § 63.11584(a) through (c) of this subpart, or

(b) You must demonstrate that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf and meet the management practices in § 63.11584(d).

§ 63.11582 What are my compliance requirements?

(a) You must demonstrate initial compliance with the emission reduction or 0.03 gr/dscf particulate matter (PM) concentration requirements specified in Table 1 of this subpart as follows:

(1) Using the methods specified in Table 2 of this subpart, or

(2) For existing sources only, using the results of an emissions test conducted in the past 5 years, provided the test meets the following requirements.

(i) The test was conducted under conditions that represent normal operation.

(ii) The test was performed using the methods specified in Table 3 of this subpart.

(iii) The test was conducted with a minimum of three separate test runs, as specified in § 63.7(e)(3).

(b) If you choose to demonstrate compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements in Table 1 of this subpart by conducting an emissions test, you must follow the requirements specified in paragraphs (b)(1) through (b)(4) of this section and include the results in your Notification of Compliance Status Report (NOCSR) in accordance with § 63.11585(b)(3).

(1) You must conduct the tests under conditions that represent normal operation.

(2) You must perform the test using the methods specified in Table 3 of this subpart.

(3) 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).

(4) You must use the following equation to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart:

$$RE = [1 - (Ci - Co)/Ci]*100$$

Where:

RE = PM removal efficiency, percent.
Ci = Concentration of PM at inlet of control device, gr/dscf.
Co = Concentration of PM at outlet of control device, gr/dscf.

(c) If you choose to demonstrate compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements specified in Table 1 of this subpart by providing control device manufacturer's performance guarantee information, then you must include the following information in your NOCSR (in accordance with § 63.11585(b)(3)).

(1) Control device make, model, and installation date.

(2) Performance guarantee certificate provided by the control device manufacturer.

(3) If a filter is used to control PM, performance guarantee information for the fabric or fiber filters used in the control device.

(d) If you choose to demonstrate compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements specified in Table 1 of this subpart by providing engineering calculations, then the calculations and supporting documentation must contain the items specified in paragraphs (d)(1) through (d)(5) of this section. These calculations and supporting documentation must be included in your NOCSR (in accordance with § 63.11585(b)(3)).

(1) Calculations and supporting documentation, such as delivery receipts, production logs and raw material safety data sheets that quantify the amount of raw materials used in the manufacture of chemical preparations (as defined in § 63.11588) in the prior calendar year.

(2) Calculations and supporting documentation, such as sales receipts, production logs and product material safety data sheets (MSDS) for chemical preparations (as defined in § 63.11588) products that quantify the amount of products produced by the chemical preparations operations in the prior calendar year.

(3) Calculations and supporting documentation of raw material losses to the atmosphere from the chemical preparations operations. This quantity (Qi in the equations in paragraph (5) of this section) is the amount of target HAP-containing PM in the uncontrolled air emissions from the chemical preparations operation, and does not include quantified and documented losses to solid or liquid waste streams, or material that is recycled back into the chemical preparations operation.

(4) Calculation and supporting documentation of quantities of target HAP-containing PM captured by the vent collection system and PM control device for the calendar year prior to the compliance date (Qo in the equations in paragraph (5) of this section).

(5) Use one of the following calculation methods to demonstrate compliance with the requirements specified in Table 1 of this subpart:

(i) For emission reduction, use the results of the calculations from paragraphs (d)(3) and (d)(4) of this section in the following equation:

$$RE = [1 - (Qi - Qo)/Qi]*100$$

Where:

RE = Annual average PM removal efficiency, percent.
Qi = Annual amount of PM in uncontrolled emissions, pounds per year.
Qo = Annual amount of PM captured by control device, pounds per year.

(ii) For the 0.03 gr/dscf PM concentration, use the results of calculations from paragraphs (d)(3) and (d)(4) of this section in the following equation:

$$PC = [Qi - Qo]*7000/DCFM*MPY$$

Where:

PC = Annual average PM concentration, grains per dry standard cubic foot (gr/dscf).
Qi = Annual amount of PM in uncontrolled emissions, pounds per year.
Qo = Annual amount of PM captured by control device, pounds per year. (Qo is equal to zero if the process vent stream is not routed to a control device.)
DCFM = Process vent stream flowrate, dscf per minute (dscfm).
MPY = Minutes per year equipment are in target HAP service.

(e) If you are certifying that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf, then you must:

(1) Include the following information in your NOCSR (in accordance with § 63.11585(b)(6)).

(i) A certification statement by the responsible official that certifies that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf. The statement shall contain that official's name, title, and signature, certifying the truth, accuracy, and completeness of the certification statement.

(ii) Engineering calculations and supporting documentation containing:

(A) The annual raw material losses to the atmosphere from paragraph (d)(3) of this section; and

(B) The calculation of the PM concentration of process vent streams from equipment in target HAP service from paragraph (d)(5)(ii) of this section, using zero for the parameter Qo since there is no control device, given in gr/dscf.

(2) For each subsequent calendar quarter (*i.e.*, three months), maintain the following records to ensure that your certification statement is valid on a continual basis:

(A) The quarterly raw material losses to the atmosphere from paragraph (d)(3) of this section; and

(B) The calculation of the PM concentration of process vent streams from equipment in target HAP service from paragraph (d)(5)(ii) of this section, but on a quarterly basis instead of an annual basis, given in gr/dscf. Use zero for the parameter Qo since there is no control device.

§ 63.11583 What are my monitoring requirements?

To demonstrate continuous compliance with the emissions standard in Table 1, you must use one of the monitoring methods described in paragraphs (a), (b) or (c) of this section while equipment within a chemical preparation operation are in target HAP service:

(a) Operate a bag leak detection system with alarm that will alert operators of a leak in the control device filter material. If a bag leak detection system with alarm is used to demonstrate compliance, then the following steps must be performed:

(1) You must install, calibrate, operate, and maintain each bag leak detection system and alarm according to manufacturer's specifications, and as specified in paragraph (a)(2) of this section.

(2) The bag leak detection system and alarm must be maintained and operated in a manner consistent with good air pollution control practices at all times.

(b) Operate a control device parameter (such as pressure drop or water flow, as appropriate) monitor and alarm system that will alert operators that the control device is operating outside the upper or lower threshold or range established by the control device manufacturer that indicate proper operation of the control device to meet the emissions reduction or PM concentration requirements.

(1) You must install, calibrate, operate, and maintain each control device parameter monitor and alarm system according to manufacturer's specifications, and as specified in paragraph (b)(2) of this section.

(2) The control device parameter monitor and alarm system must be maintained and operated in a manner consistent with good air pollution control practices at all times.

(c) Operate a continuous parameter monitoring system (CPMS) to monitor control device operation. If a CPMS is used to demonstrate compliance, then the following steps must be performed:

(1) Establish and maintain site-specific control device parameter values that indicate proper operation of the control device to meet the emissions reduction or PM concentration requirements.

(2) You must operate the continuous parameter monitoring system (CPMS) during all periods when the process equipment is in target HAP service and use all the data collected during these periods in assessing the operation of the process vent collection system and control device.

(d) You must install, calibrate, operate, and maintain each control device CPMS according to manufacturer's specifications, and as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) The CPMS must be maintained and operated in a manner consistent with good air pollution control practices at all times.

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

(3) To determine the 24-hour rolling average for the monitored parameter(s), you must:

(i) Have data from at least three of four equally spaced data values for that hour from a CPMS, except as stated in paragraph (c)(2) of this section.

(ii) Determine each successive 24-hour rolling average from all recorded readings for each 24-hour period, except as stated in paragraph (c)(2) of this section.

(4) For averaging periods of monitoring data from production in target HAP service less than 24 hours, you must:

(i) Have valid data from at least three of four equally spaced data values for each hour from a CPMS that is not out-of-control according to your manufacturer's recommendations.

(ii) Determine the average from all recorded readings for the production period, except as stated in § 63.11583(c)(2).

(5) You must record the results of each calibration and validation check of the CPMS.

(e) For each pressure measurement device, you must meet the requirements of paragraph (b) or (c) of this section, as applicable, 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 for plugging 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, if redundant sensors are not used.

(6) You must record the results of the plugging, accuracy and calibration checks specified in paragraphs (e)(3) through (e)(5) of this section in accordance with § 63.11585.

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

(1) Selection and justification of the monitored parameter that indicates proper operation of the control device to meet the emissions limitation, if the parameter measured is something other than pressure drop.

(2) Installation of the bag leak detector, parameter monitoring device, or CPMS at a measurement location relative to each affected process unit such that the measurement is representative of control of PM emissions (*e.g.,* on the last control device);

(3) Performance and equipment specifications for the parametric signal analyzer, alarm, and the data collection and reduction system, as appropriate; and

(4) Performance evaluation procedures and acceptance criteria according to the manufacturer (*e.g.,* calibrations).

(5) Ongoing operation and maintenance procedures in accordance with the manufacturer's recommendations or the general requirements of § 63.8(c)(1) and (c)(3);

(6) Ongoing data quality assurance procedures in accordance with the manufacturer's recommendations; and

(7) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i) and the requirements of § 63.11585.

(g) You must conduct a performance evaluation of each bag leak detection system, control device parameter monitor and alarm system, or CPMS in accordance with your site-specific monitoring plan.

(h) You must operate and maintain each bag leak detection system, control device parameter monitor and alarm system, or CPMS in continuous operation, and collect parametric data at all times that emissions are routed to the monitored control device.

§ 63.11584 What are my initial and continuous compliance management practice requirements?

(a) For each new and existing affected source, you must demonstrate initial compliance by conducting the inspection activities in paragraph (a)(1) of this section and demonstrate ongoing compliance by conducting the inspection activities in paragraph (a)(2) of this section.

(1) Initial vent collection system and particulate control device inspections. You must conduct an initial inspection of each vent collection system and particulate control device according to the requirements in paragraphs (a)(1)(i) through (iv) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary. You must conduct each inspection no later than 180 days after your applicable compliance date for each control device which has been operated within 180 days following the compliance date. For a control device which has not been installed or operated within 180 days following the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet particulate control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the vent collection system ductwork and control equipment for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'') and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system.

(ii) For each dry particulate control system, you must visually inspect the vent collection system ductwork and dry particulate control unit for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?''). You must also inspect the inside of each dry particulate control unit for structural integrity and condition.

(iii) An initial inspection of the internal components of a wet or dry particulate control system is not required if there is a record that an inspection has been performed within the past 12 months and any maintenance actions have been resolved.

(iv) An initial inspection of ductwork that is unsafe or difficult to inspect is not required.

(2) Ongoing vent collection system and particulate control device inspections. Following the initial inspections, you must perform periodic inspections of each vent collection system and PM control device according to the requirements in paragraphs (a)(2)(i) or (ii) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary.

(i) You must inspect and maintain each wet control system according to the requirements in paragraphs (a)(2)(i)(A) through (D) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet particulate control system.

(B) You must conduct monthly visual inspections of the vent collection system ductwork and wet particulate control equipment for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(C) You must conduct inspections of the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(D) You are required to inspect ductwork that is unsafe or difficult to inspect only during periods when it is safe or physically possible to do so.

(ii) You must inspect and maintain each dry particulate control unit according to the requirements in paragraphs (a)(2)(ii)(A) through (C) of this section.

(A) You must conduct monthly visual inspections of the vent collection system ductwork for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(B) You must conduct inspections of the interior of the dry particulate control unit for structural integrity and to determine the condition of the fabric filter (if applicable) every 12 months.

(C) You are required to inspect ductwork that is unsafe or difficult to inspect only during periods when it is safe or physically possible to do so.

(b) You must record the information specified in paragraphs (b)(1) through (6) of this section for each inspection activity.

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Method of inspection;

(4) Operating conditions during the activity;

(5) Results; and

(6) Description of any correction actions taken.

(c) 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.

(d) If you have provided certification that each process vent stream from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf, the management practice requirements are as follows:

(1) You must conduct an initial visual inspection of the vent collection system ductwork for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(2) You must conduct monthly visual inspections of the vent collection system ductwork for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(3) You are required to inspect ductwork that is unsafe or difficult to inspect only during periods when it is safe or physically possible to do so.

(4) You must record the information specified in paragraphs (d)(4)(i) through (iv) of this section for each inspection.

(i) The date, place, and time;

(ii) Person conducting the activity;

(iii) Results; and

(iv) Description of any correction actions taken.

§ 63.11585 What are my notification, recordkeeping, and reporting requirements?

(a) What General Provision notification, recordkeeping and reporting requirements must I meet? You must meet the requirements of 40 CFR part 63 subpart A according to Table 6.

(b) What notifications must I submit and when?

(1) Initial Notification of Applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability as required by § 63.9(b)(2) no later than April 29, 2010. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 120 days after initial start-up of operation or April 29, 2010, whichever is later. The initial notification of applicability must include the information specified in § 63.9(b)(2)(i) through (iii).

(2) Notification of Intent to conduct a Performance Test. If you elect to conduct a performance test, 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).

(3) Notification of Compliance Status Report (NOCSR). You must submit a NOCSR according to § 63.9(h)(2)(ii). You must submit the NOCSR, including the performance test results, if applicable, before the close of business on the 60th calendar day following the applicable compliance date specified in § 63.11580 or completion of the performance test, whichever is sooner. The NOCSR must include the information in § 63.9(h)(2)(i)(A) through (G) necessary to demonstrate compliance with the emission standard as of the applicable compliance date.

(4) If you have an existing source and are using data from a previously conducted performance test to serve as documentation of compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements of this subpart, you must submit the test data in lieu of the initial performance test results with the NOCSR required under paragraph (b)(3) of this section.

(5) You must provide the results of the initial management practices required by § 63.11584(a)(1) and (d)(1).

(6) If you are providing certification that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf, you must submit this certification in the NOCSR required in paragraph (b)(3) of this section. You must submit the certification statement, including the supporting calculations or performance test results, if applicable. The certification statement and supporting documentation must include the information in § 63.11582(e)(1) necessary to demonstrate compliance with the emission standard as of the compliance date.

(c) What reports must I submit and when?

(1) You must submit compliance reports as specified in Table 5 of this subpart that applies to you.

(2) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each compliance report specified in Table 5 of this subpart according to the following dates:

(i) If deviations occur, then:

(A) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11580 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 § 63.11580 (*i.e.,* December 31 for a source that is existing with a compliance date of December 30, 2010).

(B) 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 § 63.11580 (*i.e.,* January 31 for a source that is existing with a compliance date of December 30, 2010).

(C) Each subsequent compliance report for a period in which deviations occur must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(D) Each subsequent compliance report for a period in which deviations occur 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.

(ii) If no deviations occur, then:

(A) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11580 and ending on December 31 following the end of the first calendar year after the compliance date that is specified for your source in § 63.11580.

(B) The first compliance report must be postmarked or delivered no later than January 31 following the end of the first calendar year after the compliance date that is specified for your affected source in § 63.11580.

(C) Each subsequent compliance report for a period in which deviations occur must cover the annual reporting period from January 1 through December 31.

(D) Each subsequent compliance report for a period in which no deviations occur must be postmarked or delivered no later than January 31 immediately following the previous calendar year.

(3) The compliance report must contain the following information:

(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) If there are no deviations from the emission reduction or 0.03 gr/dscf PM concentration requirements as specified in Table 1, a statement that there were no deviations from the emission reduction or 0.03 gr/dscf PM concentration requirements during the reporting period.

(v) If there were no periods during which the CPMS (if a CPMS is used to demonstrate compliance) was out-of-control as defined by the manufacturer's

recommendations, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(vi) A description of any changes in monitoring systems or CPMS, processes (including changes that establish the basis for certification that the PM concentration from process vents will not exceed 0.03 gr/dscf or the addition of new processes), or controls since the last reporting period or for the first compliance report, since the notification of compliance status report.

(4) For each deviation, as applicable and as defined in § 63.11588, you must include the information in paragraphs (c)(3)(i) through (c)(3)(iii) of this section, and the information in paragraphs (c)(4)(i) through (4)(ix) of this section that apply to you.

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

(ii) The date and time that each bag leak detector, parameter monitor, or CPMS was inoperative, except for zero (low-level) and high-level checks.

(iii) If a CPMS is used, the date, time and duration that each CPMS was out-of-control.

(iv) 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.

(v) A list of reasons for the deviations during the reporting period.

(vi) If a CPMS is used, a summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(vii) A brief description of the process units.

(viii) A brief description of the bag leak detector, parameter monitor, or CPMS.

(ix) If a CPMS is used, the date of the latest CPMS certification or audit.

(5) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

(d) What records must I maintain?

(1) You must maintain the following records:

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

(ii) Records identifying periods when the chemical preparations operation is in target HAP service using:

(A) Production records showing the dates and times the chemical preparations operation is processing target HAP-containing materials; and

(B) Material safety data sheets (MSDS) of target HAP-containing materials being processed.

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

(iv) Records of CPMS (if a CPMS is used to demonstrate compliance) calibration checks and adjustments and maintenance performed on CPMS as required by § 63.10(b)(2)(x) and (xi).

(v) Records of CPMS as required by § 63.10(c) and § 63.11583(d)(5).

(vi) Records of all inspections as required by § 63.11584(b) and pressure measurement device checks (if applicable) as required by § 63.11583(e)(6).

(vii) Records of the site-specific monitoring plan developed according to § 63.11583(f).

(viii) Records of particulate control device manufacturing specifications and recommendations.

(2) You must maintain the records specified in paragraph (d)(1) of this section in accordance with paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(i) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(ii) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(iii) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

(3) If you are providing certification that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf, you must maintain the following records according to paragraphs (d)(2)(i) through (d)(2)(iii) of this section:

(i) Records of the initial certification statement and supporting documentation specified in paragraph (b)(6) of this section.

(ii) Records of ductwork inspections specified in § 63.11584(d)(4).

(iii) Records of the quarterly raw material losses to the atmosphere and process vent stream PM concentration calculations specified in § 63.11582(e)(2).

Other Requirements and Information

§ 63.11586 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by 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 (the delegated authority), 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 has been 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 §§ 63.11579, 63.11580, 63.11581, 63.11582, 63.11583, and 63.11584.

(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.

§ 63.11587 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 6 of this subpart.

§ 63.11588 What definitions apply to this subpart?

Chemical preparation means a target HAP-containing product, or intermediate used in the manufacture of other products, manufactured in a process operation described by the NAICS code 325998 if the operation manufactures target HAP-containing products or intermediates other than indelible ink, India ink, writing ink, and stamp pad ink. Indelible ink, India ink, writing ink, and stamp pad ink manufacturing operations are subject to regulation by the paints and allied products area source rule (40 CFR part 63, subpart CCCCCCC).

Chemical preparations facility means any facility-wide collection of chemical preparation operations.

Chemical preparations operation means the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations. A chemical preparation operation may include all, or only some, of the equipment listed above, depending on the chemical preparation being manufactured. Mixing and blending equipment may be used to

process either wet or dry materials, or a combination of wet and dry materials. Milling equipment includes, but is not limited to, various types of rolling mills, rotary mills, and grinders. Extruding equipment, for the purposes of this subpart, includes direct and indirect extruders, spray driers, and prilling towers.

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

(1) Fails to meet any requirement or management practice established by this subpart;

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

(3) Fails to meet any emissions limit.

In target HAP service means that equipment in the chemical preparation operation either contains, contacts, or is processing target HAP-containing materials.

Leak means a break in the integrity of the vent collection or control device system (*i.e.,* in the duct work, piping, *etc.*) such that visual particulate emissions, liquids or residue form outside the vent collection system or control device.

Process vent stream means a gas stream from any equipment in target HAP service at the point where that gas stream is discharged from a vent collection system to the atmosphere, or inlet of a control device, if any.

Research and development equipment means any equipment whose primary purpose is to conduct research and development to develop new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more chemical preparations facilities;

(2) For a partnership: A general partner;

(3) For a sole proprietorship: The owner; or

(4) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking official.

Target HAP means metal compounds for chromium, lead, manganese, and nickel.

Target HAP-containing means raw materials, intermediates, or products that contain one or more target HAP. Any material that contains compounds of chromium (VI), lead, or nickel in amounts greater than or equal to 0.1 percent by weight (as the metal), or manganese or chromium (III) compounds in amounts greater than or equal to 1.0 percent by weight (as the metal) is considered to be target HAP-containing. Target HAP content is shown in the formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

Unsafe or difficult to inspect means the equipment cannot be inspected without elevating the inspection personnel more than two meters above a support surface or it is not accessible at anytime in a safe manner.

Vent collection system means hoods, enclosures, ductwork and fans utilized to remove particulate emissions from chemical preparations operations work areas.

Tables of Subpart BBBBBBB of Part 63

TABLE 1 OF SUBPART BBBBBBB OF PART 63—EMISSION REDUCTION AND PM CONCENTRATION REQUIREMENTS

For each * * *	You must * * *	Using * * *
1. Process Vent Stream from equipment in target HAP service.	Route the process vent stream to a PM control device with: a. A PM percent reduction efficiency of 95 percent (98 percent for new sources), or. b. An outlet concentration of 0.03 gr/dscf or less.	Vent collection system and PM control device, such as a wet scrubber or fabric filter, that are maintained and operated per manufacturer's recommendations.

TABLE 2 OF SUBPART BBBBBBB OF PART 63—INITIAL COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION AND PM CONCENTRATION REQUIREMENTS

If you are demonstrating compliance with the * * *	You must demonstrate initial compliance by one of the following methods * * *
1. Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less..	a. Perform a PM emissions test using the methods listed in Table 3 to this subpart; or b. Provide performance guarantee information from the control device manufacturer that certifies the device is capable of reducing PM concentrations by 95 percent (98 percent for new sources) or achieves an outlet concentration of 0.03 gr/dscf or less; or c. Provide engineering calculations, such as mass balance and flow rate calculations, that demonstrate that the control device is capable of reducing PM concentration from the chemical preparations operation process vent streams by 95 percent (98 percent for new sources) or achieving an outlet concentration of 0.03 gr/dscf or less.
2. Certification that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf.	a. Perform a PM emissions test using the methods listed in Table 3 to this subpart; or b. Provide engineering calculations, such as mass balance and flow rate calculations, that demonstrate that the PM concentration from the chemical preparations operation process vent streams will not be greater than 0.03 gr/dscf.

TABLE 3 OF SUBPART BBBBBBB OF PART 63—TEST METHODS

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

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

TABLE 4 OF SUBPART BBBBBBB OF PART 63—CONTINUOUS COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION AND PM CONCENTRATION REQUIREMENTS

If you are demonstrating compliance with the * * *	You must demonstrate continuous compliance by * * *
1. Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less.	Using one of the following monitoring methods: a. A bag leak detector and alarm system, that notifies operators when a leak in the filter media is detected. b. A control device parameter monitor and alarm system, that notifies operators when the control device is operating outside of the upper or lower thresholds established by the control device manufacturer. Monitored parameters may include electricity supply to vent collection system fans, pressure drop across the control device, or scrubber liquor flow to the control device, as appropriate to the particulate matter control device being used. c. A CPMS, and maintaining records of data verifying that the vent collection system and control device were operated within the range of parameters established to comply with the emission reduction or 0.03 gr/dscf PM concentration requirements (*i.e.,* according to manufacturer's recommendations or at the conditions used during the most recent performance test) while the chemical preparations operation was in target HAP service. The control device monitoring data are averaged over a 24-hour period or an overall average per batch, whichever is less, while the chemical preparations operation is in target HAP service. Monitored parameters may include electricity supply to vent collection system fans, pressure drop across the control device, or scrubber liquor flow to the control device, as appropriate to the particulate matter control device being used.
2. Certification that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf.	a. Conducting monthly visual inspections of the vent collection system ductwork for leaks.

TABLE 5 OF SUBPART BBBBBBB OF PART 63—REPORTING REQUIREMENTS

If you are demonstrating compliance with the * * *	You must submit a compliance report as follows * * *
1. Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less.	a. An initial notice of compliance status report (NOCSR) as specified in § 63.11585(b)(3), and then as follows in (b) or (c) as applicable to you: b. If there were no deviations during the reporting period, you must submit an annual report containing: 1. A statement that there were no deviations from the requirement to route all process vent streams from equipment in target HAP service to a PM control device that achieves a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less during the reporting period. 2. If there were no periods during which the process vent collection system and control device was not operating normally (*i.e.,* according to manufacturer's recommendations or at the conditions used during the most recent performance test), a statement that the vent collection system and control device were operated normally at all times during the reporting period. c. If you have a deviation from the requirement to route all process vent streams from equipment in target HAP service to a PM control device that achieves a PM percent reduction efficiency of 95 percent (98 percent for new sources) or to an outlet concentration of 0.03 gr/dscf or less, or periods where the vent collection system or control device were not operated normally, then you must submit a semi-annual report for that reporting period. The report must contain the information specified in § 63.11585(c).

TABLE 5 OF SUBPART BBBBBBB OF PART 63—REPORTING REQUIREMENTS—Continued

If you are demonstrating compliance with the * * *	You must submit a compliance report as follows * * *
2. Certification that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf.	a. An initial NOCSR as specified in § 63.11585(b)(3) that contains the following items: 1. A statement certifying that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf. The statement shall contain that official's name, title, and signature, certifying the truth, accuracy, and completeness of the certification statement. 2. Test results or engineering calculations that demonstrate process vent streams covered by the certification will not contain a PM concentration greater than 0.03 gr/dscf.

TABLE 6 OF SUBPART BBBBBBB OF PART 63—GENERAL PROVISIONS

Citation	Subject	Applies to subpart BBBBBBB
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance with Standards and Maintenance Requirements.	Yes.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart BBBBBBB does not require startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance with Non-Opacity Emissions Standards—Applicability.	No. The emission limits apply at all times.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance.	Yes.
§ 63.6(g)	Use of an Alternative Non-Opacity Emission Standard	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart BBBBBBB does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7(a)–(d)	Performance Testing Requirements	Yes.
§ 63.7(e)(1)	Performance Testing Requirements	No. Subpart BBBBBBB specifies the conditions under which performance tests must be conducted.
§ 63.7(e)(2)–(4)	Conduct of Performance Tests and Data Reduction	Yes.
§ 63.7(f)–(h)	Use of Alternative Test Method; Data Analysis, Recordkeeping, and Reporting; and Waiver of Performance Tests.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	No.
§ 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 BBBBBBB does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart BBBBBBB does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	Yes, for CPMS provisions only. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(c)(7)–(8)	CMS Requirements	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(d)	CMS Quality Control	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(e)–(g)	CMS Performance Evaluation	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.

TABLE 6 OF SUBPART BBBBBBB OF PART 63—GENERAL PROVISIONS—Continued

Citation	Subject	Applies to subpart BBBBBBB
§ 63.9	Notification Requirements	Yes. Except Initial Notification shall be submitted in accordance with the schedule in § 63.11585.
§ 63.10(a),(b)(1), (b)(2)(viii)–(xi),(c), (e)(1), (e)(2)(i), (f).	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.

[FR Doc. E9–30500 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P