and contingency provisions), and essentially carries forward all of the control measures and contingency provisions relied upon in the earlier plan. We also find that the TAPA, a former nonclassifiable CO nonattainment area, continues to qualify for the LMP option and that therefore the 2008 CO Maintenance Plan adequately demonstrates maintenance of the CO NAAQS through documentation of monitoring data showing maximum CO levels less than 85% of the NAAQS and continuation of existing control measures. We believe the 2008 CO Maintenance Plan to be sufficient to provide for maintenance of the CO NAAQS in the TAPA over the second 10-year maintenance period and to thereby satisfy the requirements for such a plan under CAA section 175A(b). If finalized as proposed, our approval will make Federally enforceable the 2008 CO Maintenance Plan's contingency provisions, which are slightly modified from the corresponding provisions in the 1996 CO Maintenance Plan.

In connection with the 2008 CO Maintenance Plan, we are proposing to approve the statutory provision, ARS section 41–3017.01, that extends the life of the State's VEI program (applicable to the TAPA and Phoenix metropolitan areas) until the end of 2016, and that was submitted to EPA as a revision to the Arizona SIP on June 22, 2009, based on our expectation that the Arizona Legislature will extend the VEI program beyond 2016.

We also find that the 2008 CO Maintenance Plan qualifies for evaluation as an limited maintenance plan under our LMP policy in light of low monitored CO levels in the TAPA and therefore propose to approve the 2008 CO Maintenance Plan for transportation conformity purposes. If finalized as proposed, PAG (the area's MPO), the Federal Highway Administration, and the Federal Transit Administration will not be required to satisfy the regional emissions analysis under 40 CFR 93.118 and/or 40 CFR 93.119 in determining conformity of transportation plans and programs in the TAPA.

EPA is soliciting public comments on this document and on issues relevant to EPA's proposed action. We will accept comments from the public on this proposal for the next 30 days.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: July 21, 2009.

Kathleen H. Johnson,

Acting Regional Administrator, Region IX.

[FR Doc. E9–18693 Filed 8–4–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0028; FRL–8939–5]

RIN 2060–AN46

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

DATES: Comments must be received on or before September 4, 2009, unless a public hearing is requested by August 17, 2009. If a hearing is requested on the proposed rules, written comments must be received by September 21, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before September 4, 2009.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–HQ–OAR–2009–0028, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- *E-mail: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2009–0028 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Area Source NESHAP for Chemical Preparations Manufacturing

Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

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

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0028. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web Site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*e.g.,* CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Area Source NESHAP for 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 categories and entities potentially affected by the proposed standards include:

Category	NAICS Code [1]	Examples of regulated entities
Spice and Extract Manufacturing	311942	Area source facilities that manufacture salt products containing trace mineral additives.
All other basic organic chemical manufacturing.	325199	Area source facilities that manufacture products containing metal compounds of chromium, lead, manganese, or nickel.
Paint and coating manufacturing	325510	Area source facilities that manufacture products containing metal compounds of chromium, lead, manganese, or nickel.

Category	NAICS Code [1]	Examples of regulated entities
All other miscellaneous chemical product and preparation manufacturing.	325998	Area source facilities that manufacture products containing metal compounds of chromium, lead, manganese, or nickel. These 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 codes 325199 and 325510 may be subject to area source regulations for chemical manufacturing (40 CFR Subpart VVVVVV) or paint and allied products (40 CFR Subpart CCCCCCC). To address this potential for overlap, the requirements specified in Subpart VVVVVV or Subpart CCCCCCC, as applicable, supersede the requirements specified in this subpart. Therefore, if the particular chemical preparation operation is subject to regulation by either of these other area source rules, then the operation must comply with the requirements specified in Subpart VVVVVV or CCCCCCC, as applicable, and not the requirements of the proposed chemical preparations area source regulation. To determine whether operations at your facility would be 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 air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

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

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2009–0028. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by August 17, 2009, we will hold a public hearing on August 20, 2009. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Ms. Christine Adams at (919) 541–5590 at least two days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

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

Section 112(d) of the Clean Air Act (CAA) requires us 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.[1]

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 proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for a number of source categories listed pursuant to section 112(c)(3) and (k) by October 15, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006).

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

We listed the chemical preparations manufacturing source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy. The decision to include this source category on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. The chemical preparations source category was listed for its contributions toward meeting the 90 percent requirement for the following metal HAP: Compounds of chromium (Cr), manganese (Mn), nickel (Ni) and lead (Pb), referred to hence forth in this preamble as ''target HAP.''

This area source category comprises those establishments that conduct industrial operations that mix, mill, blend and/or extrude chemicals that contain the target HAP in their manufacturing processes during the production of chemical preparations. These manufacturing processes turn various dry and/or wet ingredients into chemical preparations. Chemical preparations, which are defined in the subpart, are a wide variety of compounds that may often be used as an intermediate in the manufacture of other products, such as fluxes and rubber compounding chemicals, or sold as a product, such as water treatment chemicals and drilling fluids. Chemical reactions typically do not occur in the manufacturing of chemical preparations. Emission points associated with these types of operations include sources such as Banbury mixers, mixing or blending tanks, extruders, and roll mills.

This source category does not include those establishments that are covered by other area source NESHAP, such as paint and allied coatings, or establishments that mix, mill, blend and/or extrude chemicals that do not contain the target HAP. Based on current information, we believe there are 26 affected facilities in the source category. All of these facilities have relatively diverse chemical product lines, capacities and processes. We believe that 10 of these existing facilities are considered small businesses, which are defined by the SBA as businesses of less than 500 employees.

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

When target HAP are present in the chemicals used to produce chemical preparations, the emission sources are comprised of some or all of the following equipment: mixers, blenders, mixing or blending tanks, rolling or grinding mills, and extruders.

Despite their wide variety of products, these facilities use similar processing operations and common control strategies. Most of the production equipment at all of these facilities is well controlled as a result of State requirements which focus on particulate matter (PM) emission reductions. The control technologies employed to control PM emissions among similar types of process equipment remains consistent, since the focus is on PM emissions reductions. Since the target HAP are emitted as a particulate, and are a subset of PM, the existing control technologies which control PM, and hence target HAP, emissions from similar processes is consistent across facilities. For example, dry mixing operations will often use fabric filters to control PM emissions so that the captured dust may be re-used in the process. Likewise, wet scrubbers are typically used in situations where the captured wet material can be returned to the process either as-is or after being sent through a spray dryer.

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

There are no existing national standards that apply to activities in the chemical preparations source category as defined in this subpart. However, it is important to note that the NAICS codes for this source category, 311942, 325199, 325510, and 325998, are comprised of sources that produce a wide variety of products and that some of the processes for producing those products are covered under other NESHAP or area source regulations.

We have tried to minimize the potential for overlap issues with these other national standards by precisely defining the source category for this rule. In addition to specifying the nature of the activities conducted at the affected facility, the definition specifies the type of HAP that must be contained, contacted, or processed in the various manufacturing processes for those processes to be subject to the rule.

III. Summary of Proposed Standards

A. Do the proposed standards apply to my source?

The proposed subpart BBBBBBB standards would apply to all existing or new manufacturing operations located at an area source that produce chemical preparations by mixing, milling, blending and/or extruding chemical compounds containing target HAP. The standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

B. When must I comply with the proposed standards?

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

[1] Currently, we believe that all existing chemical preparation entities would be classified primarily under NAICS 325998 and 311942, which define small businesses as those with 500 employees or less. Should any entities with primary NAICS 325199 be subject to the proposed standards, the small business definition for these entities would be those with fewer than 1,000 employees.

C. What are the proposed standards?

The proposed standards for new and existing affected sources establish a PM control device percent reduction efficiency requirement and require all process vent streams from mixing, blending, milling and extruding equipment in target HAP service to be routed through a PM control device that meets the specified efficiency requirement. The proposed standards will be met through the use of a vent stream collection system and control device, such as a wet scrubber or fabric filter, meeting the specified percent reduction efficiency requirement. Sources must maintain and operate a control device which achieves the specified removal efficiency in accordance with the manufacturer's specifications and must maintain and inspect the vent collection system and control devices on a regular basis.

New sources must demonstrate compliance with the PM control device percent reduction efficiency requirement through control device performance testing, manufacturer's control device performance guarantee information, or engineering calculations. The proposed standards allow existing sources to use the same three methods to demonstrate compliance, but existing sources may use the results of performance tests previously conducted, provided that the performance test was conducted using the reference test method specified in the proposed rule, represents the control device's normal operations (per manufacturer's recommendations) and was conducted within the last 5 years.

D. What are the compliance requirements?

The owner or operator of both new and existing sources would be required to submit an Initial Notification of Applicability that states they are subject to the regulation within 120 days of the effective date of the rule and a Notification of Compliance Status within 60 days after the applicable compliance date to demonstrate initial compliance with the proposed standards. Facilities would be required to comply continuously with the standards (to route emissions to a control device that achieves 95 percent PM emission reductions) during all operations that emit target HAP, including periods of startup and shutdown of these operations. Compliance on a continuous basis is determined on the basis of a three-hour rolling average, *i.e.,* parameters for each three-hour period are determined by averaging the control device operating parameters for each hour during the three-hour period including startup and shutdown. If a source is processing target HAP materials (*i.e.*, in target HAP service) for a period less than 3 hours, then the control device operating parameters are averaged over the period that the target HAP is being processed. Under the proposed rule, sources will determine their compliance with the emission reduction requirements by continuously monitoring specified operating parameters. Sources must also comply with specified periodic inspection procedures for vent collection systems and control devices, and must submit semi-annual compliance summary reports.

For the reasons specified in section IV of this preamble, EPA has determined that it is appropriate to use particulate matter emissions as a surrogate for target HAP emissions for all emission points in this source category, *i.e.*, mixers, mixing and blending tanks, mills, and extruders. As described above, to demonstrate initial compliance with the emission reduction requirements, existing sources will be allowed to use the results of performance tests previously conducted provided the test was conducted using the specified reference test method, represents the control device's normal operations (per manufacturer's recommendations) and was conducted within the last 5 years. As also described above (and in Table 2 of the proposed regulations), in lieu of a performance test, both new and existing sources may use control device manufacturer's performance guarantees or engineering calculations to demonstrate initial compliance with the emission reduction requirements. Due to the wide variety of operations conducted at facilities in the chemical preparations industry, it is possible that affected facilities could have target HAP present in all, or only some, of the process emissions. Therefore, each facility will be required to identify and document periods of operation in which chemical preparations operations are processing target HAP-containing materials and to document that the vent collection system and control device were operating properly during these periods when the equipment is in target HAP service. Daily, monthly and annual inspections are required to ensure proper maintenance and operation of the vent collection system and control device components. Records of the inspection activities and corrective actions must be maintained to document compliance with these management practices.

Continuous compliance with the emission reduction requirements is demonstrated through both control device parameter monitoring and keeping records of periods where the chemical preparations operation is in target HAP service. The control device manufacturer's recommended (or those conditions present during the performance test, if a test was performed) pressure drop, scrubber water supply pressure, and flow rate, as appropriate, depending on the device used to control emissions, must be maintained for each PM control device. As mentioned above, the source must document that each control device was being operated normally, according to the device manufacturer's recommendations, during periods of processing target HAP-containing materials. Records of calibration and accuracy checks of the continuous parameter monitoring system must be maintained to document proper operation and maintenance of the monitoring system.

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

The owner or operator of new and existing sources would be required to comply with the requirements of the General Provisions (40 CFR part 63, subpart A) identified in Table 6 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. We are proposing that the owner or operator of an affected facility 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. These notifications are needed for EPA to determine applicability of the standard to a particular source and a source's initial compliance with specific rule requirements. Sources would also be required to submit semi-annual compliance summary reports which document both compliance with the requirements of this rule and any deviations from compliance with any of those requirements.

Owners and operators would be required to maintain the records specified by 40 CFR 63.10 and, in addition, would be required to maintain records of all inspection and monitoring data, including:

- Records of particulate matter control device operating parameters. For fabric filters, the parameter is the pressure drop across the device. For wet scrubbers, the parameters are the water supply pressure and water flow rate.
- Records of periods of target HAP processing that demonstrate, along with

the particulate matter control device operating parameters above, that the control device is being operated within the manufacturer's specifications while compounds containing target HAP are being processed.

- Records of control device make, model, and the installation date of each such piece of equipment.
- A copy of any performance guarantee certificate provided by the control device manufacturer.
- Records of inspections of vent collection systems and control devices.
- Records of calibration and accuracy checks for the continuous parameter monitoring systems.
- Records of engineering calculations or test results to demonstrate initial compliance with the control device removal efficiency requirement.

IV. Rationale for this Proposed Rule

A. How did we select the source category?

As described in section II.B, we listed the chemical preparations source category under CAA section 112(c)(3) on November 22, 2002 (67 FR 70427). The decision to include this source category on the area source category list was based on data from the CAA section 112(k) inventory, which represents 1990 urban air information. The chemical preparations source category was listed as contributing a percentage of the total area source emissions for the following urban HAP: metal compounds for chromium, lead, manganese and nickel (the ''target HAP''). For this source category, we gathered information on the production operations, emission sources, and prevalent emission controls employed by sources, through reviews of published literature, and reviews of construction and operating permits. We also held discussions with industry representatives and State permitting organizations. This research confirmed that the chemical preparations source category emits the listed target HAP and that the existing add-on controls are effective controls for reducing target HAP emissions.

B. How did we select the affected source?

Affected source means the collection of equipment and processes in the source category or subcategory to which the subpart applies. For the chemical preparations source category, the affected source is comprised of the following process equipment when the equipment contains, contacts, or is processing target HAP: mixers, mixing and blending tanks, mills, and extruders.

After reviewing the gathered information discussed above, we identified 26 facilities that reported emissions of target HAP. These 26 facilities manufactured a wide range of chemical preparations, including, for example, fluxes, concrete additives, rust preventatives, drilling fluids, and gelatin. Some of these products contain target HAP, while other materials being produced using the same equipment may not. Despite the wide variety of products produced at these facilities, some common processing operations and control strategies became evident after further facility permit review and contact with some of the facilities. For example, fabric filters would often be used to control PM emissions from dry mixing operations, and wet scrubbers would be used in situations where the wet material could either be mixed back into the raw materials or sent through a spray dryer and then combined with raw materials.

Our research indicates that each facility utilizes at least one of the listed operations. Therefore, we define the affected source as consisting of any (one or more) of these operations when the operation contains, contacts, or processes compounds containing target HAP to produce a chemical preparation. By specifying periods of production where the equipment is ''in target HAP service,'' we are able to clarify applicability to the periods of operation where emissions of target HAP would occur, thereby avoiding any burden to those operations or entities that are not processing target HAP-containing materials.

We also realized the potential for overlap with other rules, especially the area source standards for chemical manufacturing (40 Part 63 Subpart VVVVVV) and paint and allied products (40 Part 63 Subpart CCCCCCC). We have, therefore, exempted chemical preparation operations that are subject to the requirements of Subpart VVVVVV or Subpart CCCCCCC, as applicable, from the requirements of the proposed chemical preparations regulation.

C. How did we address metal HAP emissions in this rule?

For this proposed rule, we have selected PM as a surrogate for the target metal HAP, primarily because the target HAP are emitted as a wet or dry stack particulate (the target HAP are a subset of the particulate matter). As a result, a vent collection system and control device that is effectively controlling PM will also effectively control target HAP since these HAP are a fractional constituent of the PM being controlled. Further, based on the available information, we believe that specifying specific emission or reduction limits for each target HAP would not achieve any greater reduction in emissions of the target HAP than the control devices already achieve using PM as a surrogate. We also believe it would create a significant economic burden for the affected sources and permit authorities if this proposed rule required sources to demonstrate compliance with a specific limit for each of the target HAP compounds. Based on our knowledge of the relationship between PM as a whole and the target HAP, we believe that demonstrating compliance with the proposed PM reduction requirements will ensure that appropriate reductions in emissions of target HAP are achieved.

D. How was GACT determined?

As provided in CAA section 112(d)(5), we are proposing standards that provide for the use of GACT to control chemical preparations area source category HAP emissions. As noted in section II.A of this preamble, the statute allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

We gathered available data from a variety of sources, *e.g.,* State and local permits and regulations mandating a specific level of control, regarding existing affected sources in the chemical preparations source category in order to determine the types of controls being used and the level of control generally achieved by those controls. Our analysis of that information revealed that all of the identified affected sources are well controlled because they employ some type of particulate matter control. The most common controls used were wet scrubbers and fabric filters. Based on our available permit background information for the chemical preparations source category and control device technical references, we found that existing PM control technologies (primarily fabric filters and wet scrubbers) in this category achieve between 93 and 98 percent PM reduction efficiency, with a median facility that achieves 95 percent PM reduction efficiency. We considered requiring controls for this category that achieve 98 percent PM emission reductions, but found that this would likely force a majority of existing sources to install new controls at an incremental cost to some facilities of over $400,000/ton for the additional

target HAP reduction, which we believe is unreasonable. In addition, while fabric filter technology is capable of achieving 98 percent PM reductions, we are not certain that available wet scrubber technology can achieve a 98 percent PM reduction. We considered requiring controls for this category that achieve 93 percent PM emission reductions, but believe that all existing facilities could achieve 95 percent PM reduction efficiency without requiring the installation of new emission control equipment. We recognize that some existing facilities may need to conduct new performance testing on existing controls to demonstrate 95 percent PM emission reduction performance, but we believe that 95 percent PM reduction efficiency, that is represented by the median facility control technology, best represents GACT for this source category. Based on this information, we have determined that GACT for this source category consists of a vent collection system to collect emissions from process operations, and an associated particulate matter control device, such as a fabric filter or wet scrubber that is achieving a 95 percent reduction in PM emissions.

While our information indicates that all of the target HAP emissions points at identified existing sources are currently controlled with PM control devices, we are requesting comment on whether some chemical preparations operations are currently uncontrolled. We considered whether we should require the use of PM controls on ancillary processes (beyond mixers, mixing and blending tanks, mills, and extruders) at existing affected sources but concluded that these operations are beyond the scope of the original source category listing. We also recognize that there may be a point where installing PM controls would be economically or technically infeasible regardless of the size of the facility, especially where very low quantities of PM are being emitted. To address these issues, we analyzed permit information and applicable State regulations to determine if there were any PM concentration limits that would serve as a reasonable alternative to the percent reduction requirement. We found that, for chemical preparations affected sources, in most instances State permits do not specify a limit or control performance requirement beyond simply routing PM emissions to a control device. However, in a few situations, one State has specified a 0.03 grains per dry standard cubic foot (gr/dscf) PM concentration limit at the outlet of the control devices, the calculations for which are based on a 98 percent PM reduction assumption and site specific data. We are not certain if the site specific data in these cases is sufficient on which to base a nationwide equivalent emission limit, and are, therefore, requesting comment on whether an emission limit of 0.03 gr/dscf should be included in the final rule as an alternative compliance option. Commenters should include with their comments any data they believe supports an emission limit of 0.03 gr/dscf as a compliance alternative in the final rule.

We have also considered whether new sources should have a PM reduction requirement that is greater than 95 percent. Based on our analysis of information we gathered from permits, technical references, and comparisons to similar area source requirements, we believe that it may be possible for GACT for new sources to be greater than 95 percent PM reduction. However, we currently do not have enough information for the chemical preparations source category to confirm that this level of control would be ''generally available'' for potential new affected sources. Therefore, we are also requesting comment on whether greater than 95 percent PM reduction is an economically feasible level of control for new sources.

E. How did we select the compliance requirements?

We are proposing initial compliance demonstrations, monitoring, inspections, reporting, notification, and recordkeeping requirements sufficient to assure compliance with the rule as proposed. These requirements are based, in part, on requirements imposed on several facilities within the chemical preparations source category by State permits or regulations and on our general understanding, based on years of experience, of how control devices perform and can be effectively monitored. As is the case with many of our rules, we are proposing to use data from the monitoring of certain parameters which we have found to be indicative of the effective operation of collection systems and control devices to demonstrate compliance. The parameter monitoring requirements, together with vent collection system and control device inspection requirements, are intended to ensure that the information necessary to establish that emissions controls are maintained and operated properly on a continuing basis is collected and reported. We believe the proposed requirements will both assure compliance with the emission reduction requirements of this proposed rule and minimize the burden on facilities that must implement them.

We are proposing that compliance with the requirements for mixers, mixing and blending tanks, mills and extruders in target HAP service be demonstrated by continuously monitoring particulate matter control device operating parameters. If a fabric filter is utilized, then the pressure drop of the fabric filter, as specified by the manufacturer or measured during the most recent compliance demonstration, is the monitored parameter. For a wet scrubber, monitoring of the water supply pressure and scrubbing water flow rate are proposed. The monitoring of these parameters will demonstrate that the device is being operated in accordance with the control device manufacturer's recommendations or consistent with its operation during the most recent compliance demonstration, whichever is applicable. Particulate matter hoods or vent collection systems routing the emissions to the control device must be designed to capture PM to the extent practicable from the emission point. Daily, monthly, and annual inspection and recordkeeping requirements will be used to demonstrate that the vent collection system and control device are being properly maintained.

For the initial PM percent reduction efficiency compliance demonstration, the owner or operator of a facility subject to existing source standards would be allowed to use the results from prior performance tests as long as the performance test was conducted using the reference test method specified in the proposed rule, provided that the performance test represents the control device's normal operating conditions (per manufacturer's recommendations) and was conducted within the last 5 years. We believe that this will help to reduce the compliance burden for existing sources while at the same time providing adequate assurances that the results reflect the actual operating efficiency of the control device. Initial compliance with the proposed requirement to employ a PM control device with a PM reduction efficiency of 95 percent to control PM emissions from the identified emission points at both new and existing sources can be demonstrated using the results of PM control device performance tests, PM control device manufacturer performance guarantees, or engineering calculations. As discussed above, for existing sources, we are proposing to allow the use of the results of previous performance tests so long as those tests meet the specified criteria.

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

For the reasons described below, we are proposing to exempt affected sources in the chemical preparations area source category from title V permitting requirements unless the source is otherwise required to have a title V permit. That is, we are proposing that being subject to the chemical preparations area source rule would not itself trigger the need to obtain a title V permit. Section 502(a) of the CAA provides that the Administrator may exempt an area source category (in whole or in part) from title V if (s)he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. *See* CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, or portion thereof, such that an exemption from title V is appropriate. *See* 70 FR 75320, December 19, 2005 (Exemption Rule).

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

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

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

In considering whether to exempt sources in the chemical preparations category from title V requirements, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the proposed NESHAP for the area source category. The proposed rule requires facilities to route all process vent streams from specified equipment in target HAP service to an add-on PM control device with a demonstrated percent reduction efficiency of 95 percent. Continuous compliance with this requirement would be demonstrated using parametric monitoring of the vent collection system and control device and identifying processing periods of target HAP-containing materials. For add-on control devices the proposed rule specifies the monitoring parameter(s) and averaging periods for each type of control device. The proposed rule would require that the owner/operator maintain the 3-hour average (or overall average, for periods in target HAP service less than 3 hours) pressure drop across the control device or the water supply pressure and scrubbing liquor flow rate, as appropriate to the control device, within the manufacturer's recommended range for the control device, or within the range established during the most recent performance test. Sources would demonstrate initial compliance using one of the following methods: Conduct initial performance tests, use the results of previous performance tests meeting specified requirements for existing sources only, use and maintain records of control device manufacturer's guarantees, or use and maintain records of engineering calculations. Existing sources would be allowed to use previously conducted performance tests to demonstrate compliance provided they were conducted using the reference test method specified in the proposed rule, were conducted within the past five years and reflect the control device's normal operating conditions. The proposed rule also requires the preparation of a semi-annual compliance certification report which would identify any deviations from the rule requirements that occurred during the reporting period and submission of this report to the permitting agency. The semi-annual report would call attention to those facilities in need of inspection in the same way as the reporting requirements in a title V permit. In addition, records sufficient to ensure that the compliance requirements are followed and that any needed corrective actions are taken would be required. Therefore, this proposed rule contains monitoring requirements that constitute periodic monitoring sufficient to ensure compliance with the proposed rule.

As part of the first factor, in addition to monitoring, we have considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification as specified in 40 CFR 70.6 and 71.6. For any affected area source in this category, this proposed rule would require an Initial Notification of Applicability and a Notification of Compliance Status. This proposed rule also requires owners or operators of affected facilities to certify compliance with a requirement that vent streams from specified equipment in target HAP service be routed to a control device with a demonstrated PM percent reduction efficiency of 95 percent on an annual basis. In addition, owners or operators of affected facilities must maintain records showing compliance with all of the proposed rule's

requirements and provide a report to the permitting agency if any deviation occurs. The information in the deviation report is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

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

For the second factor, we determined whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimates that the average cost of obtaining and complying with a title V permit is $65,700 per source for a 5-year permit period, including fees. *See* Information Collection Request for Part 70 Operating Permit Regulations, January 2007, EPA ICR Number 1587.07. EPA does not have specific estimates for the burdens and costs of permitting sources in the chemical preparations area source category; however, there are certain activities associated with the part 70 and 71 rules that are required of all sources. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. For a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), *see* the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities in the chemical preparations area source category, we estimated that 10 out of the 26 facilities that would be affected by this proposed rule are small businesses, all with fewer than 500 employees. We believe that these small sources lack both the technical resources to comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants to provide those resources. As discussed previously, title V permitting would impose significant costs on these area sources, and, accordingly, we believe that title V would be a significant burden for sources in this category. Almost 40 percent are small businesses with limited resources, and under title V, they would be subject to numerous mandatory activities with which they would have difficulty complying, whether they were issued a standard or a general permit. Thus, we conclude that factor two supports title V exemption for this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. In discussing the second factor, we explained that the costs of compliance with title V would impose a significant burden on many of the 26 facilities estimated to be affected by the proposed rule. Although title V might impose additional requirements, as discussed in more detail above, we believe that the monitoring, recordkeeping and reporting requirements in this proposed NESHAP would assure compliance with the emission standards imposed in the NESHAP as proposed. In addition, below in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemption for this area source category.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. EPA has implemented regulations that provide states the opportunity to take delegation of area source NESHAP, and we believe that states delegated programs are sufficient to assure compliance with this NESHAP. *See* 40 CFR part 63, subpart E (States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program).

We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. Also, states and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance success in complying with these proposed standards. We believe that together the statutory requirements for implementation and enforcement of this NESHAP by the delegated states and EPA and the additional assistance programs described above are sufficient to assure compliance with these proposed standards without relying on title V permitting.

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

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add some additional compliance requirements if imposed, we believe that this would not result in significant improvements in compliance with this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the emission standards imposed on this area source category. We further maintain that the economic and non-economic costs of compliance with title V would impose a significant burden on the sources in the chemical preparations area source category. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate

implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is ''unnecessarily burdensome'' for this area source category.

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

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

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

V. Summary of Impacts of the Proposed Standards

A. What are the air impacts?

Since 1990, 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 proposed rule does not require air emission reductions from existing sources beyond those currently being achieved by affected sources, we believe that this proposed rule reflects significant reductions in emissions since 1990 based on the use of effective PM control technology together with a reduction in the use of target HAP by the industry.

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 proposed standards. That is, we believe that all existing sources currently route vent streams from specified equipment in target HAP use through a PM control device with a PM percent reduction efficiency of 95 percent. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 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 proposed 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 proposed 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.

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 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 proposed rule. (*See* Docket ID No. EPA–HQ–OAR–2009–0028.)

C. What are the economic impacts?

The only measurable costs attributable to these proposed standards are associated with the monitoring, recordkeeping, and reporting requirements. These proposed standards are estimated to impact a total of 26 area source facilities. We estimate that approximately 38 percent (10 of 26) of these facilities are small entities as defined by the SBA. Our analysis indicates that compliance with this proposed 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 proposed 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.

VI. 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 proposed rule have been submitted to OMB for approval

under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2356.01.

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

This proposed NESHAP would require sources in the chemical preparations area source category 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, vent collection system and control device inspections, and submit semi-annual compliance reports. The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 2,372 labor hours per year at a cost of approximately $176,000 or approximately $6,800 per facility.

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number [EPA–HQ–OAR–2009–0028]. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 5, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by September 4, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact all new and 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 proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to minimize the impact of this proposed 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.

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

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

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

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The action imposes requirements on owners and operators of specified area sources and not Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final rule is not likely to have any adverse energy effects because energy requirements will not be significantly impacted by additional monitoring requirements. There are no additional pollution controls that would consume energy required by this proposed rule.

I. National Technology Transfer Advancement Act

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

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, and 5A. 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 proposed 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 5A.

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

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

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

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

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

List of Subjects in 40 CFR Part 63

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

Dated: July 28, 2009.

Lisa P. Jackson,

Administrator.

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

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart 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

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 August 5, 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 [insert date one year after publication of the final rule in the **Federal Register**].

(b) If you start up a new affected source on or before [insert the date of publication of the final rule in the **Federal Register**], you must achieve compliance with this subpart no later than [insert the date of publication of the final rule in the **Federal Register**].

(c) If you start up a new affected source after [insert the date of publication of the final rule in the **Federal Register**], 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 the emission standard in Table 1 to this subpart and the management practices in § 63.11584 of this subpart that apply to you. These standards apply at all times.

§ 63.11582 What are my compliance requirements?

(a) You must demonstrate initial compliance with the emission reduction 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 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:

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

where:

RE = particulate matter removal efficiency, percent.
Ci = concentration of particulate matter at inlet of control device, gr/dscf.
Co = concentration of particulate matter at outlet of control device, gr/dscf.

(c) If you choose to demonstrate compliance with the emission reduction 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 particulate matter, 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 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 target HAP in the raw materials used in chemical preparations operations in the calendar year prior to the compliance date.

(2) Calculations and supporting documentation, such as sales receipts, production logs and product material safety data sheets (MSDS) for target HAP-containing products that quantify the amount of target HAP in products of the chemical preparations operations in the calendar year prior to the compliance date.

(3) Calculations and supporting documentation of target HAP raw material losses from the chemical preparations operations that were not contained in products, solid or liquid waste streams, or recycled back into the chemical preparations operation prior to any vent collection system or particulate matter control device in the calendar year prior to the compliance date. This quantity is the amount of target HAP-containing particulate matter in the uncontrolled air emissions from the chemical preparations operation (Qi).

(4) Calculation and supporting documentation, such as manufacturer guarantees, of quantities of target HAP-containing particulate matter captured by the vent collection system and particulate matter control device for the calendar year prior to the compliance date (Qo).

(5) Use the results of the calculations from paragraphs (d)(3) and (d)(4) of this section in following equation to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart:

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

where:

RE = particulate matter removal efficiency, percent.

Qi = annual amount of particulate matter in uncontrolled emissions, pounds per year.

Qo = annual amount of particulate matter captured by control device, pounds per year.

§ 63.11583 What are my monitoring requirements?

(a) To demonstrate continuous compliance, you must establish and maintain site-specific control device parameter values that indicate proper operation of the control device to meet the emissions reduction requirements according to your monitoring plan established under paragraph (g) of this section, as specified in Table 4 of this subpart.

(b) Data recorded during monitoring malfunctions, associated repairs, or periods of inactivity of the chemical preparation operation resulting in cessation of emissions to which the monitoring applies may not be used in data averages and calculations to establish operating levels, nor may such data be used in fulfilling a minimum data availability requirement. You must operate the continuous parameter monitoring system (CPMS) during all other 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.

(c) You must install, calibrate, operate, and maintain each control device CPMS according to manufacturer's specifications, and as specified in paragraphs (c)(1) through (c)(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 3-hour average, 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 (b) of this section.

(ii) Determine each successive 3-hour average from all recorded readings for each 3-hour period, except as stated in paragraph (b) of this section. You must have at least two of the three hours for that period using only hourly values that are based on valid data (*i.e.,* not described by paragraph (b) of this section).

(4) For production periods in target HAP service less than 3 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(b).

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

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

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

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

(3) Check pressure tap 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.

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

(7) You must record the results of the inspections and accuracy and calibration checks specified in paragraphs (d)(3) through (d)(6) of this section in accordance with § 63.11585.

(e) As an alternative to installing the CPMS specified in paragraph (c) of this section, you may install a continuous emissions monitoring system (CEMS) that measures inlet and outlet PM concentrations around the control device and meets the requirements specified in § 63.8 and the applicable performance specifications of 40 CFR part 60, appendix B.

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

(1) 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 CPMS at a measurement location relative to each affected process unit such that the measurement is representative of control of particulate matter emissions (*e.g.,* on the last control device);

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

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

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

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

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

(3) 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.

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

(i) You must operate and maintain the CPMS in continuous operation, and collect parametric data at all times that emissions are routed to the monitored control device, except for system breakdowns, repairs, maintenance periods, instrument adjustments, or checks to maintain precision and accuracy, calibration checks and zero and span adjustments.

§ 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 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 (iii) 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 60 days after your applicable compliance date for each control device which has been operated within 60 days following the compliance date. For a control device which has not been installed or operated within 60 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.

(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 (C) 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.

(ii) You must inspect and maintain each dry particulate control unit according to the requirements in paragraphs (a)(2)(ii)(A) and (B) 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.

(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.

§ 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 4.

(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 120 days after the date of publication of the final rule in the **Federal Register.** 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 120 days after the date of publication of in the **Federal Register**, whichever is later. The initial notification of applicability must include the information specified in § 63.9(b)(2)(i)–(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)–(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 requirements of this subpart, you must submit the test data in lieu of the initial performance test results with the NOCSR required under paragraph (a)(3) of this section.

(c) *What reports must I submit and when?*

(1) You must submit compliance reports as specified in Table 5 to 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 to this subpart according to the following dates:

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11580 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.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11580.

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

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

(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 requirements specified in Table 1, a statement that there were no deviations from the emission reduction requirements during the reporting period.

(v) If there were no periods during which the CPMS 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 CPMS, 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 defined in § 63.11588, including any deviations that occur during periods of startup, shutdown, and malfunction, you must include the information in paragraphs (c)(3)(i) through (iii) of this section, and the information in paragraphs (c)(4)(i) through (x) of this section.

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

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

(iii) The date, time and duration that each CPMS was out-of-control.

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

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

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

(vii) A summary of the total duration of CPMS 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.

(viii) A brief description of the process units.

(ix) A brief description of the CPMS.

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

(iii) Records of CPMS calibration checks and adjustments and maintenance performed on CPMS as required by § 63.10(b)(2)(x) and (xi).

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

(v) Records of all inspections as required by § 63.11583(c)(5), § 63.11583(d)(7) and § 63.11584(b).

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

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

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

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, 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 product, or intermediate used in the manufacture of other products, manufactured in a process operation described by one or more of the following NAICS codes, with specific criteria, as follows: 325998 if the operations manufactures target HAP-containing products or intermediates; 311942 if the operation manufactures products containing trace mineral additives; 325199 if the operation is not covered by the chemical manufacturing area source regulation (40 CFR part 63, subpart VVVVVV); 325510 if the operation is not covered by the paint and allied products area source regulation (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 limitation or management practice in this subpart during startup, shutdown, or malfunction.

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 inlet of a control device.

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 responsible official as defined in § 63.2.

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, lead, or nickel in amounts greater than or equal to 0.1 percent by weight (as the metal), or manganese 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.

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

Tables to Subpart BBBBBBB of Part 63

TABLE 1 TO SUBPART BBBBBBB OF PART 63—EMISSION REDUCTION REQUIREMENTS

For each * * *	You must * * *	Using * * *
Process Vent Stream	Route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95%.	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 TO SUBPART BBBBBBB OF PART 63—INITIAL COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION REQUIREMENTS OF TABLE 1

If you are demonstrating compliance with the * * *	You must demonstrate initial compliance by one of the following methods * * *
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%.	(1) Perform a particulate matter emissions test using the methods listed in Table 3 to this subpart; or (2) Provide performance guarantee information from the control device manufacturers that certifies the device is capable of reducing particulate matter concentrations by 95%; or, (3) Provide engineering calculations, such as mass balance and flow rate calculations, capable of demonstrating that the control device is capable of reducing particulate matter concentration from the chemical preparations operation process vent streams by 95%.

TABLE 3 TO 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 5A 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 TO SUBPART BBBBBBB OF PART 63—CONTINUOUS COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION REQUIREMENTS OF TABLE 1

If you are demonstrating compliance with the . . .	You must demonstrate continuous compliance by . . .
Requirement to route all vent streams from equipment in target HAP service to a PM control device with a PM percent removal efficiency of 95%.	a. Identifying periods when the chemical preparations operation is in target HAP service. These include: 1. Production records showing the dates and times the chemical preparations operation is processing target HAP-containing materials, and 2. Material safety data sheets (MSDS) of target HAP-containing materials being processed. b. Monitoring, with 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 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 is averaged over a 3-hour period or over all valid data points, if the chemical preparations operation is in target HAP service for less than 3 hours at a time. 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.

TABLE 5 TO SUBPART BBBBBBB OF PART 63—REPORTING REQUIREMENTS

If you are demonstrating compliance with the . . .	You must submit a compliance report that contains . . .
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%.	a. Documentation of periods when the chemical preparations operation is in target HAP service. The documentation includes: 1. Production records showing the dates and times the chemical preparations operation is processing target HAP-containing materials, and 2. MSDS of target HAP-containing materials being processed. b. For the periods in target HAP service identified in a. above: 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 with a PM percent reduction efficiency of 95% during the reporting period, if there are no deviations that apply to you. 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 there were no periods during which the vent collection system and control device were not being operated normally during the reporting period. 3. 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 with a PM percent reduction efficiency of 95% or periods where the vent collection system or control device were not operated normally, the report must contain the information specified in § 63.11585(b).

TABLE 6 TO 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.

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

Citation	Subject	Applies to subpart BBBBBBB
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(ii)–(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	No.
§ 63.6(f)(1)	Compliance with Non-opacity Emissions Standards—Applicability	No.
§ 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	Performance Testing Requirements	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes.
§ 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.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	Yes.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart BBBBBBB does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.8(c)(7)–(8)	CMS Requirements	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.8(d)	CMS Quality Control	Yes. Only if you used CEMS to demonstrate compliance.
§ 63.8(e)–(g)	CMS Performance Evaluation	Yes. Only if you used CEMS to demonstrate compliance.
§ 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. E9–18537 Filed 8–4–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 414, 415, and 485

[CMS–1413–CN2]

RIN 0938–AP40

Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors in the proposed rule entitled ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010'' which appeared in the July 13, 2009 **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Aucha Prachanronarong, (410) 786–1879.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Errors

In FR Doc. E9–15835 of July 13, 2009, there were technical errors that are identified and corrected in the Correction of Errors section below.

In the Physician Quality Reporting Initiative section of the preamble to the proposed rule (section II.G.2.), we inadvertently omitted eight measures in our discussion of the new individual quality measures proposed for 2010.

II. Correction of Errors

In FR Doc. E9–15835 of July 13, 2009 (74 FR 33520), make the following corrections:

1. On page 33574, second column, first full paragraph, the number ''168'' is corrected to read ''176.''

2. On page 33580, bottom fourth of the page, third column, last paragraph, the number ''22'' is corrected to read ''30.''

3. On page 33581,

a. Top of the page,

(1) Second column, first paragraph, line 11, the number ''22'' is corrected to read ''30.''

(2) Third column, first full paragraph,

(a) Line 3, the phrase ''16 of these 22 measures'' is corrected to read ''24 of these 30 measures.''

(b) Line 6, the number ''16'' is corrected to read ''24.''

b. Bottom two-thirds of the page, in Table 19—New Individual Quality Measures Proposed for 2010, after the last measure titled '' HIV/AIDS: Sexually Transmitted Diseases—Syphilis Screening'' add the following measures:

Measure title	NQF endorsement status as of 5/1/09	AQA adoption status as of 1/31/09	Measure developer	Reporting mechanism(s)
Functional Communication Measure: Spoken Language Comprehension.	Yes	No	American Speech-Language-Hearing Association (ASHA).	Registry.
Functional Communication Measure: Attention	Yes	No	ASHA	Registry.
Functional Communication Measure: Memory	Yes	No	ASHA	Registry.
Functional Communication Measure: Motor Speech	Yes	No	ASHA	Registry.
Functional Communication Measure: Reading	Yes	No	ASHA	Registry.
Functional Communication Measure: Spoken Language Expression.	Yes	No	ASHA	Registry.
Functional Communication Measure: Writing	Yes	No	ASHA	Registry.
Functional Communication Measure: Swallowing	Yes	No	ASHA	Registry.

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: July 31, 2009.

Dawn Smalls,

Executive Secretary to the Department.

[FR Doc. E9–18840 Filed 8–3–09; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 080724902–9663–01]

RIN 0648–AX07

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests, and to transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–03 and 08–02. In addition, NMFS proposes to include minor regulatory modifications and clarifications, eliminate an existing sunset provision in the Madison-Swanson and Steamboat Lumps time/area closure, and establish a small time/area closure in the Gulf of Mexico called the ''Edges 40 Fathom Contour.'' These changes could impact fishermen with a commercial swordfish, HMS Angling, or Charter/Headboat (CHB) permit who fish for Atlantic swordfish.

DATES: Comments on this proposed rule may be submitted at a public hearing (oral or written), or via mail, or fax by September 4, 2009.

The public hearing dates and times are: