

United States
Environmental Protection
Agency

Office of Air Quality
Planning and Standards
Research Triangle Park, NC 27711

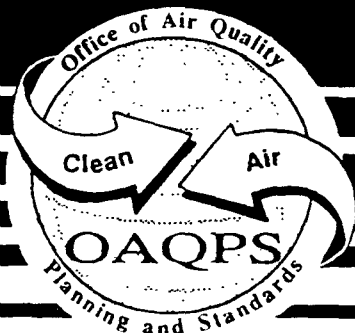
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February 1994

Air



GENERAL PROVISIONS for 40 CFR PART 63

Background Information for Promulgated Regulation



General Provisions for 40 CFR Part 63 :

National Emission Standards for Hazardous Air Pollutants for Source Categories

Background Information for Promulgated Regulation

Emission Standards Division

U.S. ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

February 1994

**U.S. Environmental Protection Agency
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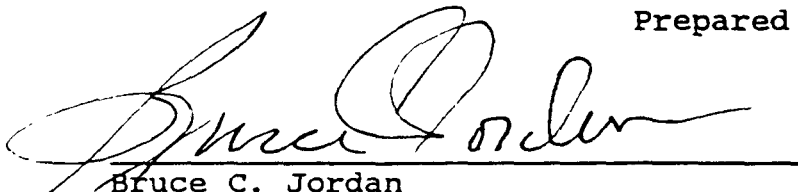
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ENVIRONMENTAL PROTECTION AGENCY

Background Information
for General Provisions for 40 CFR Part 63

Prepared by:



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2/23/94

Date

1. The General Provisions eliminate the repetition of general information and requirements within national emission standards for hazardous air pollutants (NESHAP) to be established subsequent to the Clean Air Act Amendments of 1990. Under section 112 of the Clean Air Act as amended, the EPA is authorized to promulgate national standards to control emissions of hazardous air pollutants from categories of stationary sources of these pollutants. The General Provisions, located in subpart A of part 63 of title 40 of the Code of Federal Regulations, codify procedures and criteria to implement NESHAP for source categories.
2. Copies of this document have been sent to the following Federal Departments: Labor, Health and Human Services, Defense, Transportation, Agriculture, Commerce, Interior, and Energy; the National Science Foundation; the Council on Environmental Quality; members of the State and Territorial Air Pollution Program Administrators; the Association of Local Air Pollution Control Officials; EPA Regional Administrators; and other interested parties.
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LIST OF ABBREVIATIONS AND ACRONYMS

Act	Clean Air Act, as amended in 1990
BACT	Best available control technology
BID	Background Information Document
CFR	Code of Federal Regulations
CEMS	Continuous emission monitoring system(s)
CMS	Continuous monitoring system(s)
COMS	Continuous opacity monitoring system(s)
EPA	Environmental Protection Agency
FR	Federal Register
GACT	Generally available control technology
HAP	Hazardous air pollutant(s)
HON	Hazardous Organic NESHAP
LAER	Lowest achievable emission rate
MACT	Maximum achievable control technology
NESHAP	National emission standard(s) for hazardous air pollutant(s)
NSPS	New source performance standard(s)
O/O	Owner or operator(s)
PSD	Prevention of significant deterioration
QA/QC	Quality assurance/quality control

1.0 SUMMARY OF CHANGES SINCE PROPOSAL

The General Provisions, located in subpart A of 40 CFR part 63, codify procedures and criteria to implement standards for emissions of hazardous air pollutants from stationary sources under section 112 of the Clean Air Act, as amended in 1990 (the Act). The provisions include administrative procedures related to applicability determinations (including new versus existing and area versus major sources), compliance extensions, and requests to use alternative means of compliance. In addition, general requirements related to compliance-related activities outline the responsibilities of owners and operators to comply with relevant emission standards and other requirements. The compliance-related provisions include requirements for compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for performance testing and monitoring, and reporting and recordkeeping requirements. Finally, the EPA is promulgating amendments to the General Provisions for parts 60 and 61 to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the part 63 General Provisions.

The General Provisions for part 63 were proposed in the Federal Register on August 11, 1993 (58 FR 42760). The public comment period was August 11, 1993 to October 12, 1993. Seventy-one (71) comment letters were received on the proposal. The final rule is scheduled to be published in the Federal Register in March 1994.

In response to comments received on the proposed General Provisions, numerous changes were made from proposal in the

final rule. A significant number of these are clarifying changes, designed to make the Agency's intent clearer as requested by commenters. In addition, many changes have been made in the final rule wherever reasonable to reduce the paperwork burden on sources affected by part 63 NESHAP and on State agencies that will implement part 63 standards once they have been delegated the authority to do so.

Substantive changes made since proposal having a broad impact on the regulated community that will be subject to the General Provisions are summarized in this section. These, and other substantive changes made since proposal, are described in more detail in section 2.0 of this document. Comments not addressed in this document are addressed in the preamble to the final rule.

Definitions. Several definitions have been clarified as a result of public comments. For example, the definition of "affected source" has been revised to clarify that sources regulated under part 60 or part 61 are not affected sources under part 63. The EPA revised the definition of "existing source" to be consistent with other definitions in the General Provisions. The definition of "fugitive emissions" was revised to clarify that fugitive emissions are to be considered in determining a source's status as major or area. The definition of "construction" was revised to clarify that the "affected source" is as defined in part 63 is the subject of the requirements in the General Provisions for newly constructed sources. The EPA also revised the definition of "reconstruction" and the ensuing requirements for a reconstructed source to clarify their applicability. The definition of "federally enforceable" was revised to clarify the role of citizen suits in enforcing the provisions of the Act and to clarify that requirements that are otherwise enforceable under other statutes administered by the EPA may be recognized for the purposes of the Act. The term "capital expenditure" has been deleted from the final rule, because it

is not necessary to define the term in the General Provisions.

Timing Provisions. Many comments were received on the timing and content of notifications and other reports required by the General Provisions, and on recordkeeping requirements. Comments from owners or operators of facilities potentially subject to part 63 standards (and the General Provisions) generally argued for more time to prepare submittals than allowed in the proposed rule and for a reduction in the amount of information that must be submitted or recorded. State and local agencies that will be implementing the rule expressed concern about the timing and volume of information that would be submitted to them and their ability to respond to these submittals. These agencies also requested flexibility in implementing requirements of the General Provisions.

Significant changes were made in the rule from proposal to promulgation in response to these comments. These changes significantly reduce the burden on owners and operators but also recognize the need of enforcement agencies to have timely and adequate information to assess compliance with emission standards and other requirements established under section 112 of the Act. These significant changes are discussed below.

Initial Notification. Under § 63.9(b) of the General Provisions, when a relevant part 63 standard is promulgated for a source category, owners or operators of sources that are subject to the standard must submit a notification. In the final rule, the time period allowed for submission of the initial notification has been extended from 45 days to 120 days. Also, the information required to be submitted with the initial notification has been greatly reduced.

Requests for Compliance Extensions. Changes were made from proposal to § 63.6(i), that deals with compliance extension requests, to increase the allowable time for Agency review and for owners or operators to provide additional information. The EPA has also added provisions to the final rule establishing procedures for a source to request a

compliance extension if that source has installed best available control technology (BACT) or technology to meet a lowest achievable emission rate (LAER).

Excess Emission Reports. A major change was made in the recordkeeping and reporting requirements concerning the need for, and frequency of, quarterly excess emissions reports. In the proposed rule, if continuous monitoring system(s) (CMS) data were used for direct compliance determinations, a quarterly report on excess emissions or exceedances was required in § 63.10(e)(3), even if there were no occurrences of excess emissions or exceedances ("negative reporting"). In the final rule, as long as there are no occurrences of excess emissions or exceedances, semiannual reporting is sufficient. The procedures for an affected source to reduce the frequency of required reports are clarified.

Performance Tests and Performance Evaluations.

Performance test deadlines specified under § 63.7(a)(2) were extended from 120 days to 180 days after compliance dates. Similarly, the § 63.7(b) requirement to provide notice of the date of the performance test was reduced from 75 days to 60 days before the test. Observation of the test by the EPA is intended to be optional, and this section was revised to clarify this point. A similar change was made to § 63.8(e)(2), notice of performance evaluation (for CMS), to allow a 60-day notification period rather than a 75-day period. Also, § 63.7(g) was revised to allow sources 60 days, instead of 45 days, to submit the required performance test results to the enforcing agency.

A major comment related to performance tests concerned the proposed requirement that sources submit site-specific performance test plans to the Administrator for review and approval before a required performance test is conducted. This requirement has been changed in the final rule such that the test plan must be developed and made available for review, but it does not need to be submitted for approval prior to a

required performance test unless it is requested by the EPA or delegated State agency. A similar change has been made in the final rule regarding the development and submittal of site-specific performance evaluation test plans under § 63.8(d).

Some commenters expressed confusion regarding the distinction between performance tests and performance evaluations, and the EPA has added definitions of "performance test" and "performance evaluation" to the final rule to eliminate this confusion. In addition, the Agency has defined the phrase "representative performance" in the final rule for the purpose of clarifying the conditions for conducting performance tests.

Finally, the EPA clarified the situation when a final standard is more stringent than a proposed standard and when a source would be allowed to (1) conduct an initial performance test to demonstrate compliance with the proposed standard and a second test to demonstrate compliance with the final standard or (2) conduct an initial performance test to demonstrate compliance with the final standard.

Startup, Shutdown, and Malfunction Plan. Commenters generally objected to the level of detail they perceived as required in the startup, shutdown, and malfunction plan [§ 63.6(e)]. The intent and purpose of the plan is explained further in section IV.F.1. of the preamble to the final rule and clarifying changes have been made in the rule. Specifically, the rule has been revised to delete the requirement for "step-by-step" procedures. Numerous comments were received relating to the timing and circumstances of reports of deviations from a source's plans. In response to the commenters' concerns, the EPA has revised the rule to require reporting of actions that are "not consistent" (rather than "not completely consistent") with the plan. The Agency also has increased the time period for sources to provide "immediate" reports of these actions to 2 working days from 24 hours. The followup report is required within 7 days.

Other Changes to Reporting and Recordkeeping

Requirements. The final rule includes provisions for EPA Regional Offices to waive the duplicate submittal of notifications and reports. Also, the requirements relating to negotiated schedules, (i.e., "mutual agreement provisions") were revised from proposal to more clearly reflect implementing agencies' prerogatives to comply with the schedules outlined in the General Provisions. Finally, a recordkeeping requirement has been added [in § 63.10(b)(3)] for owners and operators of area sources to maintain a record of the determination of their area source status, when this determination is necessary to demonstrate that a relevant standard for major sources is not applicable.

There were also significant changes in other areas of the rule from proposal. These are summarized below.

Monitoring. Several comments concerned the relevance and applicability of the part 63 monitoring provisions to related monitoring provisions contained in other parts (e.g., parts 60, 61, 64, and 70) as well as the relationship between monitoring provisions in the General Provisions and those in other subparts of part 63. The EPA has provided additional clarification and made changes to specific provisions as a result of these comments.

Repair Period for CMS. The Agency also received many comments on the proposed 7-day repair period for CMS. After consideration of these comments, the EPA revised § 63.8(c)(1) of the rule to distinguish between routine and nonroutine CMS malfunctions. The final rule requires the immediate repair of "routine" CMS failures. In addition, the owner or operator will be required to identify these routine malfunctions in the source's startup, shutdown, and malfunction plan. Nonroutine failures of the CMS must be reported and repaired within 2 weeks unless circumstances beyond the owner or operator's control prevent the timely repair or replacement of the CMS.

Construction and Reconstruction. Many comments were

received regarding the procedures for construction and reconstruction, and several changes were made to the rule in response to these comments. At the request of State and local agencies, the EPA has deleted the requirement in § 63.5(c) that they be compelled to prereview construction or reconstruction plans. The Agency also revised the definition of reconstruction to clarify its applicability and the ensuing requirements for a reconstructed source. The Agency received several comments regarding reconstruction determinations, especially where a source has installed control devices to meet emission standards for existing sources. In response, the Agency has explained its policy on these issues and clarified that it is generally not the Agency's intent to penalize sources who make changes to comply with a relevant standard for existing sources by subjecting them to new source maximum achievable control technology (MACT) requirements.

Applicability. The rule has been revised in several places to clarify the applicability of the General Provisions. Revisions were made to § 63.1 of the rule that clarify that a source that is subject to any part 63 standard or requirement is also subject to the requirements of the General Provisions. Provisions have been added to address two situations related to major and area source determinations. As noted earlier, the Agency added a recordkeeping requirement in the final rule, to require that sources who determine they are not subject to a relevant standard keep a record of their applicability determination. The EPA also added provisions in the final rule to address compliance dates for area sources that increase their emissions (or potential to emit) such that they become major sources.

Separate Rulemaking on Potential to Emit. Under section 112 of the Act, the determination of whether a facility is a major source or an area source is made on the basis of the facility's potential to emit hazardous air pollutants (HAP), considering controls. Substantive issues were raised by

commenters on mechanisms available for establishing the Federal enforceability of limitations and the timeframe available for establishing Federal enforceability that went beyond the scope of issues addressed in the August 11, 1993 proposed rulemaking for the General Provisions. The EPA is proposing a separate rulemaking to address these comments. This separate rulemaking is described in more detail in section 2.1.4 of this document.

2.0 SUMMARY OF PUBLIC COMMENTS

Seventy-one letters commenting on the proposed General Provisions were received. A list of commenters, their affiliations, and the EPA docket number assigned to their correspondence is given in Table 2-1. No one requested to speak at a public hearing; thus, none was held. Summaries of those comments and the EPA's responses that were not discussed in the promulgation preamble are presented in the following sections.

2.1 APPLICABILITY

2.1.1 Enabling Materials

Comment: The EPA should provide a matrix or other readily accessible compliance guide so that affected sources, particularly smaller companies can understand their obligations with regard to the General Provisions and particular relevant emission standards.

Response: The Agency agrees that effective implementation of the part 63 General Provisions requires the development and distribution of materials that will enable affected sources, State agencies, and others to understand and use the detailed requirements contained in the General Provisions. The Agency intends to develop such materials for distribution after promulgation of the final General Provisions rule. In addition, this promulgation background information document (BID) contains useful summary information, such as in Appendix A on timelines for the implementation of activities required by the General Provisions. Also, the Agency plans to include a summary of the requirements in the General Provisions that are applicable to a particular source category in each emission standard that is promulgated under part 63.

TABLE 2-1. LIST OF COMMENTERS ON PROPOSED GENERAL PROVISIONS
FOR 40 CFR PART 63 AND PROPOSED AMENDMENTS TO GENERAL
PROVISIONS FOR 40 CFR PARTS 60 AND 61

Docket item number ^a	Commenter and affiliation
IV-D-1	Mr. Bryce Harthoorn Deere and Company John Deere Road Moline, Illinois 61265-8098
IV-D-2	Mr. Leonard D. Verrelli Air Quality Management Section Dept. of Envir. Conservation 410 Willoughby Ave., Suite 105 Juneau, Alaska 99801-1795
IV-D-3	Mr. Jonathon H. Bloomberg Oppenheimer Wolff & Donnelly First Bank Bldg., Suite 1700 St. Paul, Minnesota 55101
IV-D-4	Mr. Richard C. Phelps Eastman Chemical Company Post Office Box 1993, FANB-4 Kingsport, Tennessee 37662
IV-D-5	Ms. Diane E. Strayer Borden Packaging and Industrial Products Post Office Box 3626 Bellevue, Washington 98009
IV-D-6	Mr. B.L. Taranto Exxon Chemical Americas Post Office Box 3272 Houston, Texas 77253-3272

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-7	Ms. Beverly Hartsock Office of Air Quality Texas Natural Resource Conservation Commission Post Office Box 13087 Austin, Texas 78711-3087
IV-D-8	Mr. Robert D. Fletcher California Air Resources Board 2020 L Street Post Office Box 2815 Sacramento, California 95812
IV-D-9	Mr. Philip T. Cavanaugh The Chevron Companies 1401 Eye St., NW, Suite 1200 Washington, D.C. 20005
IV-D-10	Mr. Sarosh J.H. Manekshaw Pennzoil Company Pennzoil Place, P.O. Box 2967 Houston, Texas 77252-2967
IV-D-11	Mr. R.T. Richards Texaco, Incorporated Post Office Box 509 Beacon, New York 12508
IV-D-12	Mr. Thomas A. Kovacic Dow Corning Corporation Midland, Michigan 48686-0995
IV-D-13	Ms. Nancy A. Wildeboer Sun Company, Incorporated Ten Penn Center 1801 Market Street Philadelphia, PA 19103-1699

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-14	Ms. Melanie S. Kelley Total Petroleum, Incorporated Total Tower, 9000 19th St. Denver, Colorado 80202-2523
IV-D-15	Mr. Charles D. Malloch Monsanto Company 800 North Lindbergh Boulevard St. Louis, Missouri 63167
IV-D-16	Mr. John A. Dege E.I. du Pont de Nemours and Company, Incorporated Chestnut Run Plaza Post Office Box 80721 Wilmington, DE 19880-0721
IV-D-17	Mr. Samuel A. Bleicher Miles & Stockbridge Metropolitan Square 1450 G St., NW, Suite 445 Washington, D.C. 20005
IV-D-18	Mr. William J. Holzhauer Niagara Mohawk Power Corp. 300 Erie Boulevard West Syracuse, New York 13202
IV-D-19	Ms. Desi M. Chari Safety-Kleen Corporation 1000 North Randall Road Elgin, Illinois 60123-7857
IV-D-20	Mr. Robert W. Schenker General Electric Company 3135 Easton Turnpike Fairfield, Connecticut 06431
IV-D-21	Mr. J.E. Cooper Allied-Signal Incorporated Post Office Box 1139 Morristown, NJ 07962-1139

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-22	Mr. John E. Schmidt FMC Corporation 1735 Market Street Philadelphia, PA 19103
IV-D-23	Mr. Ronald W. Skinner Air Products & Chemicals, Inc.
IV-D-24	Mr. Frank P. Collis Occidental Chemical Corp. Corp. Environmental Affairs Occidental Chemical Center 360 Rainbow Blvd. South P.O. Box 728 Niagara Falls, NY 14302-0728
IV-D-25	Mr. David Bradshaw Rockwell International Corp. 2000 North Memorial Drive Post Office Box 582808 Tulsa, Oklahoma 74158
IV-D-26	Mr. William H. Lewis Morgan, Lewis and Bockius 1800 M Street, North West Washington, D.C. 20036
IV-D-27	Mr. Richard Carroll Phillips Petroleum Company Bartlesville, Oklahoma 74004
IV-D-28	Mr. Joseph R. Williams State of Washington Dept. of Ecology P.O. Box 47600 Olympia, Washington 98504-7600
IV-D-29	Ms. Elsie L. Munsell Department of the Navy Washington, D.C. 20360-5000

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-30	Mr. Gary D. Myers The Fertilizer Institute 501 Second Street, North East Washington, D.C. 20002
IV-D-31	Dr. Norbert Dee Nat. Petroleum Refiners Assoc. 1899 L St., NW, Suite 1000 Washington, D.C. 20036
IV-D-32	Mr. David E. Davis Vulcan Chemicals Post Office Box 530390 Birmingham, AL 35253-0390
IV-D-33	Mr. George S. Dibble CO Assoc. of Commerce & Industry 1776 Lincoln St., Suite 1200 Denver, Colorado 80203-1029
IV-D-34	Mr. Duane W. Marshall Union Camp Corporation Post Office Box 1391 Savannah, Georgia 31402
IV-D-35	Mr. Robert P. Strieter The Coalition for Clean Air Implementation 607 14th St., NW, Suite 800 Washington, D.C. 20005-2011
IV-D-36	Mr. David W. Gustafson The Dow Chemical Company 2030 Dow Center Midland, Michigan 48674
IV-D-37	Ms. Leslie S. Ritts Chadbourn and Parke 1101 Vermont Avenue, NW Washington, D.C. 20005-3521

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-38	Mr. B. Kent Burton Integrated Waste Serv. Assoc. Two Lafayette Centre 1133 21st St., NW, Suite 205 Washington, D.C. 20036
IV-D-39	Ms. Shannon S. Broome Swidler and Berlin 3000 K St., NW, Suite 300 Washington, D.C. 20007
IV-D-40	Ms. Sherry L. Edwards Synthetic Organic Chemical Manufacturers Assoc., Inc. 1330 Connecticut Ave., NW Suite 300 Washington, D.C. 20036-1791
IV-D-41	Ms. Margaret L. Claiborne Hunton and Williams 2000 Pennsylvania Ave., NW Suite 9000 Washington, D.C. 20006
IV-D-42	Mr. David E. Menotti Perkins Coie 607 14th St., NW Washington, D.C. 20005-2011
IV-D-43	Mr. Donald Theiler State and Territorial Air Pollution Program Admin. 444 North Capitol St., NW Washington, D.C. 20001
IV-D-43	Mr. Robert Colby Association of Local Air Pollution Control Officials 444 North Capitol St., NW Washington, D.C. 20001

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-44	Koch Refining Company Post Office Box 2608 Corpus Christi, Texas 78403
IV-D-45	Mr. David Driesen Natural Resources Defense Council 1350 New York Ave., NW, Suite 300 Washington, D.C. 20005
IV-D-45	Mr. Ronald White American Lung Association 1726 M St., NW, Suite 902 Washington, D.C. 20036
IV-D-46	Mr. M.L. Mullins Chemical Manufacturers Association 2501 M Street, North West Washington, D.C. 20037
IV-D-47	Ms. Dorothy P. Bowers Merck and Company, Inc. One Merck Drive Post Office Box 100, FTA-105 Whitehouse Station, NJ 08889- 0100
IV-D-48	Mr. J.C. Hovious Union Carbide Corporation Health, Safety, & Environment 39 Old Ridgebury Road Danbury, CT 06817-0001
IV-D-49	Mr. Matthew L. Middaugh Can Manufacturers Institute 1625 Massachusetts Ave., NW Washington, D.C. 20036

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-50	Ms. Theresa Parrone Tektronix, Incorporated Post Office Box 500 Beaverton, Oregon 97077-0001
IV-D-51	Mr. Ronald D. Truelove Conoco Incorporated Post Office Box 1267 Ponca City, OK 74602-1267
IV-D-52	Ms. Cathy Rhodes Colorado Department of Health 4300 Cherry Creek Drive South Denver, Colorado 80222-1530
IV-D-53	Mr. Kenneth L. Alkema Fernald Environmental Restoration Management Corp. Post Office Box 398704 Cincinnati, Ohio 45239-8704
IV-D-54	Ms. Karen M. Cheek-Deajon Dupont Agricultural Products La Porte Plant Post Office Box 347 La Porte, Texas 77572-0347
IV-D-55	Mr. Peter L. de la Cruz Keller and Heckman 1001 G Street, North West Suite 500 West Washington, D.C.
IV-D-56	Mr. Donald F. Theiler State of Wisconsin Dept. of Natural Resources 101 S. Webster St. Box 7921 Madison, Wisconsin 53707

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-57	Mr. Jim Sell National Paint and Coatings Association 1500 Rhode Island Ave., NW Washington, D.C. 20005-5503
IV-D-58	Mr. Brian Bateman Bay Area Air Quality Management District 939 Ellis Street San Francisco, CA 94109
IV-D-59	Ms. Julia A. Hatcher Latham & Watkins Attorneys at Law 1001 Pennsylvania Ave., NW Suite 1300 Washington, D.C. 20004-2505
IV-D-60	Ms. Dorothy P. Bowers Merck and Company, Inc. One Merck Drive Post Office Box 100, FTA-105 Whitehouse Station, NJ 08889-0100
IV-D-61	Mr. Gregory M. Adams County Sanitation Districts of Los Angeles County 1955 Workman Mill Road Whittier, CA 90607-4998
IV-D-62	Ms. Lisa J. Thorvig Minnesota Pollution Control Agency 520 Lafayette Road St. Paul, MN 55155-4194

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-63	Mr. Edan T. Dionne International Business Machines Corp. Post Office Box 100 Somers, New York 10589
IV-D-64	Mr. J. William Vinzant Kaiser Aluminum 5555 Hilton Avenue, Suite 205 Baton Rouge, LA 70808-2597
IV-D-65	Mr. Randy S. Allman Agribusiness Assoc. of Iowa 900 Des Moines Street Des Moines, Iowa 50309-5549
IV-D-66	Ms. Catherine R. M. Ehlhardt Eli Lilly and Company Lilly Corporate Center Indianapolis, Indiana 46285
IV-D-67	Mr. Michael J. Bradley Northeast States For Coordinated Air Use Management 129 Portland Street Boston, Massachusetts 02114
IV-D-68	Mr. Matthew L. Middaugh Can Manufacturers Institute 1625 Massachusetts Ave., NW Washington, D.C. 20036
IV-D-69	Mr. B.L. Taranto Exxon Chemical Americas Post Office Box 3272 Houston, Texas 77253-3272
IV-D-70	Mr. B.L. Taranto Exxon Chemical Americas Post Office Box 3272 Houston, Texas 77253-3272

TABLE 2-1. (continued)

Docket item number ^a	Commenter and affiliation
IV-D-71	Mr. Peter D. Venturini California Air Resources Board 2020 L Street Post Office Box 2815 Sacramento, California 95812

^aAll public comments submitted are included in the docket for this rulemaking. Docket No. A-91-09, containing information considered by the EPA in development of the promulgated General Provisions, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Room M1500, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260-7548. A reasonable fee may be charged for copying.

2.1.2 Definitions of Source

Many commenters submitted comments regarding the definitions of "major source," "area source," "affected source," and the relationships among them. The EPA has discussed these issues in detail in the preamble to this final rule. More specific comments not discussed in the preamble are addressed below.

Comment: The commenter believes that the definition of "affected source" should specify that sources regulated under part 61 are not affected sources for the purposes of part 63. This commenter suggests specific revisions to the proposed definition such that an affected source would be a source regulated by a relevant standard established pursuant to part 63 and section 112 of the Act as amended on November 15, 1990.

Response: The "Act" referred to in the definition of "affected source" is defined as being the Clean Air Act as amended on November 15, 1990. The EPA has also revised the definition of "affected source" to indicate that sources regulated under part 60 or part 61 are not affected sources for the purposes of part 63.

Comment: Several commenters commented on the definition of "existing source," stating that as proposed it is inconsistent with other definitions in the proposal and the Clean Air Act. One commenter stated specifically that the definition should be the same as that in part 61, and two commenters suggested that the phrase "or a reconstructed source" be removed.

Response: The EPA has revised the definition of "existing source," to be consistent with other definitions in the General Provisions, by deleting the words "or a reconstructed source." The definition of existing source in part 61 refers to any "stationary source" that is not a new source. Because part 63 is concerned with the regulation of "affected" sources, the definition in the General Provisions refers to any "affected source" that is not a new source.

("Affected source" is defined in the General Provisions in terms of the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated pursuant to section 112.) The EPA believes that this definition for "existing source" is appropriate.

Comment: The commenter states that emissions from any oil and gas exploration and production well with its associated equipment should not be aggregated with emissions from similar units for major source determinations. The commenter believes that this statement should be included in the General Provisions definition of "major source," reflecting provisions under section 112(n)(4) of the Act. The commenter is also concerned that case-by-case determinations of "contiguous or adjacent property" be made consistently.

Response: The EPA believes that source category-specific provisions such as those in section 112(n)(4) addressing the treatment of oil and gas exploration and production wells are more appropriately addressed in individual MACT standards, which may override or supplement the General Provisions as necessary to properly regulate the source category in question. Further, the EPA intends to make case-by-case determinations of "contiguous or adjacent property" in a consistent manner.

Comment: One commenter expressed concern that the definition of "stationary source" was restricted to listed categories of sources. The commenter believes that this provision should not be applied to section 112(g) of the Act, as the intent of section 112(g) is to consider all major sources of HAP, regardless of whether the EPA has listed the category.

Response: The proposed definition of "stationary source" does restrict stationary sources, for the purposes of part 63, to those listed sources. Because regulations implementing section 112(g) have not yet been finalized, and the issue of whether they will apply to all HAP-emitting major sources or

only to major sources in those categories of sources that are listed pursuant to section 112(c) has not yet been decided, the EPA agrees that it is inappropriate to restrict the definition of "stationary source" to listed categories. Therefore, the second sentence in the proposed definition of "stationary source" has been deleted in the final rule.

Comment: One commenter requested that the distinction between stationary source and major source be clarified in the final General Provisions. The commenter believes that the definition of stationary source should be narrow, and the definition of major source should be "appropriately comprehensive."

Response: The definitions of "stationary source" and "major source" in the General Provisions reflect the language of the statute. Section 112(a)(3) directs that stationary source shall have the same meaning as under section 111(a). Section 111(a) defines a stationary source as "any building, structure, facility, or installation which emits or may emit any air pollutant." This non-specific definition allows the EPA flexibility in designating, for each standard set for a source category, the appropriate units or combination of units that are subject to emission limits. This designation is made, for part 63 standards, through the selection of one or more "affected sources." Whether, for a particular standard, the definition of affected source is narrow (i.e., encompassing few emission points) or broad will be determined at the time that the standard is developed (and will be discussed in the Federal Register notice of proposed rulemaking for the standard). The General Provisions merely establish the framework within which source category-specific standards will be developed and are not the place to address the issue of how narrow or broad the definition of affected source should be for a particular standard.

The definition of "major source" in the statute [section 112(a)(1)] is more specific, referring to "...any stationary

source, or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls" hazardous air pollutants exceeding certain threshold amounts. The EPA views this statutory definition (also adopted in the General Provisions) as comprehensive, including all HAP emission points that are located at a plant site. A major source will encompass one or more stationary sources. Due to the flexibility inherent in the statutory definition of stationary source, it is more appropriate that the specific distinction between stationary source and major source be addressed within the context of each source category-specific rulemaking rather than in the General Provisions.

Comment: A commenter wonders if, based on the definitions of "new source" and "affected source," the addition of a piece of HAP-emitting equipment at a subject stationary source renders the addition subject to new source MACT.

Response: The addition of a piece of HAP-emitting equipment would render the addition subject to new source MACT if a MACT standard is in effect, construction commenced on the addition after the proposal date of the standard, and the equipment that constitutes the addition is defined as the affected source under that MACT standard.

Also, the addition of HAP-emitting equipment could render a source subject to new source MACT if the addition served to reconstruct the subject source. This situation could arise either before or after the promulgation of an applicable MACT standard. Before the MACT standard is promulgated, if the addition constitutes reconstruction of a major source it will be subject to new source MACT. After the MACT standard is promulgated, if the addition constitutes reconstruction of the affected source, as defined in the MACT standard, then new source MACT will apply.

Comment: The commenter believes that the General

Provisions should prohibit changes in the definition of source that would have the effect of expanding the source category. The commenter is specifically concerned about a source becoming subject to a final MACT standard when it was not subject to the proposed standard. The commenter also suggests that the definition of source in individual MACT standards should not be left until the proposal of the standard. Instead, a separate advance notice should be made available to the public, in order to ensure adequate public involvement before the process has proceeded too far.

Response: Consistent with the approach of using the nonspecific term "affected source," the EPA believes it is inappropriate for the General Provisions rule to restrict the definition of the affected source that may be developed for the purposes of regulation by a particular standard established under part 63. The scope of any particular source category that will be regulated under part 63 will be defined when individual regulations are developed that cover that source category. This ensures that individual definitions of affected source will reflect variations among industries and that they will be meaningful to the regulated source categories. The EPA intends to include representatives from affected industries in the standards development process before proposal of a NESHAP in order to define the "source" to be regulated by that standard.

Comment: A commenter disagrees with the General Provisions approach to defining "major source" because it will be too costly, and the emissions reductions achieved will be proportionally minimal. Specifically, the commenter states that it is unreasonable to require all sources at a major facility to comply with major source MACT, when some of these sources have emissions below the major source cutoff levels. The commenter suggests that major source MACT only be applied to sources that exceed the major source cutoff.

Two other commenters were also concerned with the manner

in which multiple MACT categories at a single facility will be addressed by the General Provisions. Specifically, the commenters wondered if being a major source for one MACT category will impose MACT on other processes with minor (area source level) emissions. Thus, the commenters believe that the General Provisions should specify whether a source will need to exceed the HAP threshold for each MACT category, or whether exceeding the threshold for one category automatically makes every other listed category at that facility subject to MACT standards.

Response: The EPA believes that Congress intended that all portions of a major source be subject to MACT regardless of how many sources the facility is divided into. Senator Durenburger's statement at passage of the final Bill in the Senate illustrates this:

When determining if a MACT standard applies to [affected parts of an industrial plant within an entire site] -- for example, a coke oven battery within a steel mill -- is the agency to look to the emissions of the entire site, or to the emissions of the individual affected part? The managers' intent is reflected in the EPA paper's alternative 2(a) which states that where the entire plant is a major source, "any portion thereof to which a MACT standard applies is subject to that standard regardless of the total emissions from that portion." ... In this case, the coke oven is subject to the MACT standard for coke ovens even though its emissions, considered alone are less than 10 tons per year.

104 Cong. Rec. S16927 (October 27, 1990).

Thus, the EPA will set one or more MACT standards for a major source, and sources within that major source will be covered by the standard regardless of whether, when standing alone, each one of those sources would be major.

Regarding the concern expressed that this approach will result in a high cost per ton of HAP removed for some sources, the EPA will consider economic impacts during the development process for each source category-specific MACT standard. Within the bounds of the minimum technology requirements set

forth in the statute, the Agency will seek the most cost-effective approach for each standard.

2.1.3 Relationship of the General Provisions to the Coke Oven Regulation

Comment: One commenter submitted comments on the relationship of the General Provisions to the NESHAP promulgated for coke oven emissions in subpart L of 40 CFR part 63 (58 FR 57911, October 27, 1993). This NESHAP was developed through the process of regulatory negotiation and issued as a final rule prior to promulgation of the General Provisions. Section 63.300(f) of the coke oven rule states that, "After October 28, 1992, rules of general applicability promulgated under section 112 of the Act, including the General Provisions, may apply to coke ovens provided that the topic covered by such a rule is not addressed in this subpart." The commenter, through a broad interpretation of this language, concludes that many requirements of the General Provisions are not applicable to the coke oven rule. The presumption of the comments received is that if a topic, no matter how broad, is addressed in any way by the coke oven rule, then the General Provisions do not apply, even if the General Provisions contain specific additional items that were not addressed in the coke oven rule.

Response: The EPA disagrees with the commenter's broad interpretation and application of § 63.300(f). All items in the General Provisions were not discussed by the negotiating committee for the coke oven rule because of higher priorities and time limitations. Agreement was reached on several of the more important items (for example, provisions for malfunctions). However, the committee felt that those portions of the General Provisions not in conflict with the provisions they negotiated should apply to coke ovens. Consequently, any requirements in the General Provisions that are not specifically addressed in the coke oven rule may also

apply to coke oven owners or operators subject to subpart L of 40 CFR part 63.

Comment: Section 63.1(a)(3) of the General Provisions, addressing the relationship of the General Provisions to other regulations, does not apply to coke ovens because the topic is covered in § 63.312 of the coke oven regulation.

Response: Section 63.312 of the coke oven regulation primarily implements the EPA's intent that certain existing regulations not be relaxed (e.g., that there be no weakening of existing SIP regulations) based on the coke oven rule. This does not exempt batteries from meeting the requirements of other regulations or more stringent regulations if they are developed, which is what the cited part of the General Provisions requires. Consequently, the General Provision section that was cited should apply as written to coke oven batteries.

Comment: The definitions in the General Provisions should only apply and give content to those parts of the General Provisions that are found to apply to coke ovens.

Response: The EPA agrees with this comment. The coke oven regulatory negotiating committee defined terms that are applicable within the context of the coke oven regulation.

Comment: The circumvention section of the General Provisions [§ 63.4(b)] does not apply to coke oven batteries because this topic was addressed by the negotiating committee with specific provisions in the coke oven rule [§ 63.309(c)(3)(iii) and § 63.309(c)(6)].

Response: The EPA disagrees with this comment and intends that the General Provisions on circumvention apply to coke oven batteries. The cited references in the coke oven rule address two common ways of circumventing emission limits by coke oven batteries (lowering collecting main pressure and blocking doors from view.) The committee knew these things had occurred in the past and wrote them specifically into the rule as not allowed. However, the committee did not mean to

imply that these are the only unallowable ways to circumvent the rule or that any other ways of circumventing the rule would be allowable. Consequently, if the EPA judges that this provision does not apply to coke oven batteries, the implication would be that creative ways to circumvent the rule (other than the two cited) may be legal.

Comment: The commenter agrees that preconstruction review procedures in the General Provisions would apply to coke oven batteries. However, the coke oven rule provides procedures for identifying new and reconstructed sources and specifies when new source standards apply. Consequently, the preconstruction review provisions apply only to new or reconstructed batteries as identified in the coke oven rule. The reference to coke oven compliance dates in proposed §63.6(c)(1) should be removed to avoid confusion.

Response: The EPA agrees that the criteria for determining when new source standards apply and must be complied with is specifically addressed in the coke oven rule, and that the General Provisions on this subject do not apply. Although the language proposed in § 63.6(c)(1) of the General Provisions noting that the compliance dates for coke ovens are those codified in the coke oven rule did no harm, it has been removed in the final rule as requested to avoid confusion.

Comment: The General Provisions for operation and maintenance requirements, including startups, shutdowns, and malfunctions, do not apply to coke ovens because these topics were covered in the coke oven rule.

Response: The EPA agrees with this comment. The coke oven regulatory negotiating committee discussed operation and maintenance requirements at length and during this discussion had available an early draft of the General Provisions. Differences between the final coke oven rule and the final General Provisions appear to be minor.

Comment: The General Provisions for procedures, deadlines, and methods for determining compliance

[sections 63.6(f) and (h)] do not apply because they are addressed in the coke oven regulation.

Response: The EPA agrees with this comment. Compliance determinations are specifically and comprehensively addressed in the coke oven rule, and therefore, the General Provisions do not apply on this topic.

Comment: The General Provisions for extensions of compliance [§ 63.6(i)] do not apply because coke ovens cannot qualify for the early reductions program, and dates for compliance extensions for coke ovens are addressed in the Act and in the coke oven rule.

Response: The EPA agrees with this comment.

Comment: The coke oven rule does not impose obligations on the owner or operator to conduct performance tests. Consequently, the performance test requirements in the General Provisions (§ 63.7) do not apply to coke ovens. Even if certain testing obligations of coke plant owners or operators are determined to be "performance tests," the General Provisions on the subject would not apply because this was a topic addressed by the negotiating committee.

Response: Most of the performance testing required by the coke oven rule is not performed by the owner or operator; consequently, the EPA agrees that the General Provisions on this subject would not apply in most cases. However, there are at least two situations in which the coke plant operator may conduct what may be considered a performance test. The owner or operator is required to conduct performance tests of sheds and control devices in order to qualify for an alternative standard for doors under sheds. In addition, the owner or operator must inspect the collecting main each day for leaks, and if leaks are found, they must be repaired within a specified time frame.

The EPA agrees that the performance testing requirements of the General Provisions are not appropriate for the collecting main inspection and repair, which is basically a

work practice standard. However, the General Provisions for performance testing may be appropriate for the testing required for the alternative door standard. There are several items in the General Provisions that were not covered in the coke oven rule or discussed by the committee. These items include the quality assurance program [§ 63.7(c)], performance test facilities [§ 63.7(d)], conduct of performance tests [§ 63.7(e)], use of an alternative test method [§ 63.7(f)], and data analysis, recordkeeping, and reporting [§ 63.7(g)]. The fact that the coke oven rule does not directly require these items does not mean that the negotiating committee considered them and rejected them. These are details not directly considered by the committee and could apply to the coke oven rule whenever they are not in direct conflict with the coke oven rule. Consequently, the quality assurance requirements in the General Provisions appear to be appropriate for performance testing of a shed and its control device.

Comment: The coke oven rule allows an option of using a COMS and specifies the safeguards to ensure quality, representativeness, and availability of data. Consequently, the General Provisions for CMS do not apply to coke ovens using COMS under the alternative standard for doors under sheds.

Response: The EPA agrees with this comment. The coke oven rule cites Performance Specification 1 in Appendix B to part 60 and requires that each system be operated, calibrated, and maintained according to the requirements in part 52.

Comment: The General Provisions for CMS (in § 63.8) do not apply to measurements of the exhaust flow parameters for sheds on coke batteries with an approved alternative standard for doors (§ 63.305 of the coke oven rule). The coke oven rule specifies in § 63.305(f)(7) that these parameters be monitored in accordance with the approved monitoring plan, and appropriate requirements would be developed in the course of

approving the monitoring plan.

Response: The EPA does not see a conflict between the requirements in the General Provisions for CMS and those in the coke oven rule for measurements of the exhaust flow parameters for sheds on coke batteries with an approved alternative standard for doors. The final determination of which specific requirements apply in these cases will be made as part of the approval process for the monitoring plan. Consequently, the requirements of the General Provisions may be adopted in this process.

Comment: The General Provisions for CMS do not apply to the monitoring of a flare's pilot flame (e.g., with a thermocouple) for coke oven batteries equipped with flares on their bypass/bleeder stack.

Response: It is the EPA's intent that flares be monitored for the existence of a pilot flame, and that the full requirements in the General Provisions for CMS not apply. This has been clarified in the General Provisions and also applies to the coke oven rule. This topic is discussed further in Section 2.10 of this BID.

Comment: The General Provisions for CMS do not apply to the monitoring of collecting main pressure by coke oven batteries because these requirements, including quality assurance procedures, are addressed in the coke oven rule.

Response: The EPA agrees with this comment. Collecting main pressure is monitored as a critical parameter for operating the coke battery. Quality assurance provisions for monitoring collecting main pressure are given in the rule under the test method (section 6.3 of Method 303).

Comment: The notification requirements in the General Provisions [§ 63.9(b)] do not apply to coke oven batteries because this topic is already covered in the coke oven rule for initial notifications [§ 63.311(c)], notification of performance tests, notification of visible emission observations, and notification of compliance status

[§ 63.311(b)]. The notification that the source is subject to special performance requirements [§ 63.9(d) of the General Provisions] and the additional notification requirements for sources with CMS are not applicable to coke batteries.

Response: The EPA agrees that most of these notification requirements in the General Provisions will not apply because they are addressed in the coke oven rule. An exception is the requirement for CMS. If coke ovens are found to subject to CMS provisions (e.g., monitoring parameters associated with the shed exhaust under the alternative door standard or using a continuous opacity monitor under the same alternative), then the General Provision notification requirements for CMS may apply.

Comment: The recordkeeping and reporting requirements in the General Provisions [§§ 63.10(b) and (d), 63.10(c) and (e)] generally do not apply to coke oven batteries because these items are addressed specifically in the coke oven rule. The only additional requirement that might be imposed by the General Provisions would be those associated with waivers of recordkeeping or reporting requirements in § 63.10(b)(xii) under § 63.10(f).

Response: The EPA agrees that most of the reporting and recordkeeping requirements are addressed under the coke oven rule. Those in the General Provisions that would apply include any that are not in conflict with the coke oven rule and are required to implement applicable parts of the General Provisions.

Comment: The General Provisions for flares (§ 63.11) do not apply to coke oven batteries because this topic is covered in § 63.307 of the coke oven rule.

Response: The EPA agrees with this comment. The flare requirements for coke oven batteries were discussed and agreed upon by the negotiating committee. The requirements are similar to those in section 63.11 of the General Provisions.

Comment: The General Provisions establish procedures for

an alternative test method for performance tests performed by owners or operators. Parallel procedures should be established for performance tests of coke oven batteries that are conducted by the enforcement agency rather than by the owner or operator. Nothing in the coke oven negotiations precludes the EPA from establishing procedures for approval of alternative methods for coke oven batteries.

Response: The committee discussed and debated almost every aspect of the test method at great length, and after lengthy deliberation, settled upon the testing requirements in Method 303. Consequently, it cannot be stated with certainty that the committee would have approved of the EPA's establishment of procedures for alternative methods for testing coke batteries. However, the EPA recognizes that procedures for alternative methods could be useful for those cases when the established method is inappropriate or impracticable. Nothing in the General Provisions precludes the development of alternative methods for performance tests conducted by the enforcement agency, and the EPA may consider this in the future.

2.1.4 Potential to Emit

Under section 112, the determination of whether a facility is a major source or an area source is made on the basis of the facility's potential to emit HAP, considering controls. This is an important determination, because different requirements may be established in a part 63 standard for major and area sources (when the standard regulates area sources). The EPA's intended policy for implementing potential to emit considering controls was reflected in the definition proposed in § 63.2 of the General Provisions for the term "potential to emit." The proposed definition included the requirement that for a physical or operational limitation on HAP emissions (including air pollution control devices) to be considered as limiting a source's potential to emit for the purposes of part 63, the

limitation or the effect it would have on emissions must be federally enforceable. A definition of federally enforceable was also proposed.

Many comments were received on the topic of potential to emit. Some issues raised in these comments, particularly with regard to mechanisms available for establishing the Federal enforceability of limitations and the timeframe available for establishing Federal enforceability, were beyond the scope of issues addressed in the August 11, 1993 proposed rulemaking for the General Provisions. Because of this, and because of the importance of potential to emit to determining the applicability of part 63 standards, the Agency decided to propose a separate rulemaking to address potential to emit issues.

Therefore, the EPA is proposing, in a separate rulemaking, amendments to the General Provisions to provide mechanisms for creating limits on potential to emit until all other permanent mechanisms are in place in States. In addition, this separate rulemaking would establish deadlines by which major sources of HAP would be required to establish the Federal enforceability of limitations on their potential to emit in order to avoid compliance with otherwise applicable emission standards or other requirements established in or under part 63.

Comments and responses on potential to emit are presented below. As is noted, responses to comments on certain issues are being deferred to the Agency's separate proposal on potential to emit. Until the Agency takes final action on the separate rulemaking, the basic policy on the definition of potential to emit is retained from the proposed General Provisions.

Comment: Comments were received concerning the requirement that controls be federally enforceable in order to be considered as limiting a source's potential to emit. Commenters argued that all operational limitations should be

considered as limiting a source's potential to emit, not just those that are federally enforceable. Individual commenters offered case-specific examples of controls that limited HAP emissions and that commenters felt should qualify as limiting potential to emit.

Response: The EPA has considered these comments regarding potential to emit and Federal enforceability and does not believe any change in policy is warranted in this regard. The EPA considered similar comments in the context of the June 28, 1989 Federal Register notice (54 FR 27274) and there decided that Federal enforceability would continue to be an essential element in determining potential to emit of pollutants regulated through the SIP. The EPA does not believe there is any basis for altering this policy with regard to HAP. Therefore, for the same reasons stated in the June 28, 1989 notice, the General Provisions require that any limitation on potential to emit must be federally enforceable.

Comment: Many comments were received on the mechanisms available for limiting a source's potential to emit HAP. Some commenters felt that the mechanisms available currently were insufficient and burdensome. Commenters were also concerned about the availability of mechanisms to limit a source's potential to emit in a State where a permit program has not been approved. One commenter requested that the EPA provide a streamlined and practical method for a source to apply voluntary controls towards limiting potential to emit. Other commenters suggested vehicles in addition to those cited in the proposed General Provisions for controls to qualify as federally enforceable.

Response: As discussed in the EPA's response to the previous comment, the Agency is retaining the requirement that controls be federally enforceable to qualify as limiting a source's potential to emit. Although some mechanisms to limit potential to emit are in place, primarily for criteria pollutants, the Agency recognizes that until there are

approved State permit programs in place under title V of the Act, there are few mechanisms currently available for establishing HAP limits for the purposes of section 112. As discussed in the introduction to this section, the EPA is proposing, in a separate rulemaking, to amend the General Provisions to provide mechanisms for creating limitations on potential to emit HAP until all other permanent mechanisms are in place. In addition, this separate rulemaking would set the timeframe allowable for establishing the Federal enforceability of limits.

Comment: Some commenters suggested that the EPA should reevaluate its policy regarding the calculation of potential to emit in light of the "WEPCO" decision and EPA rules promulgated in response to that decision. Wisconsin Electric Power Company v. Reilly, 893 F.2d 901 (7th Cir. 1990); 57 FR 32314 (July 21, 1992). In particular, these commenters felt that assumptions of continuous operation in calculating potential to emit is inappropriate and inconsistent with these precedents.

Response: The EPA believes that neither the WEPCO decision, nor the rules promulgated subsequent to that decision, warrant any change in the definition of "potential to emit" in the General Provisions. The WEPCO decision addressed only "like-kind" replacement of equipment at an electric power plant. As a legal matter, that decision did not hold that the EPA could not assume continuous operation in calculating potential to emit, but rather, that the EPA could not make this assumption in light of the existing prevention of significant deterioration (PSD) regulations. For the reasons stated in the preamble to the final WEPCO rule, that rule was intended to apply narrowly to situations similar to that presented in the WEPCO case. (See 57 FR 32333.) The EPA continues to believe that the approach traditionally used in determining whether a source is major by virtue of its potential to emit of criteria pollutants is appropriate. The

EPA is not persuaded that this approach is any less appropriate in the context of section 112 major source determinations.

Comment: Several commenters disagreed with the Agency's potential to emit policy, and argued that potential to emit should be based upon a source's actual emissions when sources have a historical record of emissions. Two commenters argued that potential to emit should be based on a realistic projection of anticipated emission levels, not on the presumption of continuous emissions. One commenter specifically claims that the potential to emit policy is not indicative of actual operational emissions in agribusiness, because of its seasonal nature. Because facilities in this business must be capable of handling high volumes for a very short time, their calculated potential to emit based on year-round operation is far higher than these operations ever actually emit. The commenter requests that new regulations promulgated by the EPA include flexibility for States to accept actual emissions, where reasonable and practical, as the basis for the issuance of operating permits or other regulatory action.

Response: The first step in calculating a source's potential to emit is to estimate uncontrolled emissions of each HAP under maximum physical and operational capacity. Calculating uncontrolled emissions at maximum capacity is consistent with the Agency's previous policy on potential to emit, for example under the New Source Review program. If federally enforceable limitations are applicable, these limits may, under certain circumstances, be used to reduce the estimate of uncontrolled emissions. For example, through the permitting process under title V of the Act, a source and a State may negotiate limits that are appropriate for that source. Once a limit becomes part of a title V permit, it can qualify as federally enforceable. The EPA believes that the permitting process already provides the flexibility that the

commenters are seeking. In addition, the proposed rulemaking to address potential to emit issues for the air toxics program includes a discussion of additional approaches that could be used to limit the potential to emit of sources with special circumstances, such as agricultural operations, in a streamlined manner. Under these other approaches, sources could establish federally enforceable potential to emit limits that could allow them to avoid being subject to otherwise applicable requirements under both part 63 and the title V permit program.

Comment: The commenter states that the final General Provisions should define federally enforceable to mean limitations and conditions that are enforceable by the Administrator and citizen suits pursuant to section 304 of the Act. The commenter believes that citizen suits are an important element of Federal enforceability. The commenter also believes that the potential to emit definition should state that both the controls and the effects of controls should be federally enforceable.

Response: The EPA has revised the rule to accommodate the commenter's first suggestion. The EPA agrees that Federal enforceability by citizen suits is part of the Act, and should therefore, be reflected in the General Provisions. The definition of potential to emit in the rule does state that "any physical or operational limitation on the capacity of the stationary source to emit a pollutant... shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable" [emphasis added].

The final rule clarifies that, to be federally enforceable, a Clean Air Act requirement must be enforceable by both the Administrator and citizens. The definition also clarifies that requirements that are otherwise enforceable under other statutes administered by the EPA may be recognized for purposes of the Clean Air Act. Consistent with established Clean Air Act policy on this issue, the EPA will

consider limitations established under other statutes as limiting air emissions in a federally enforceable manner only if those limitations meet the EPA's criteria for Federal enforceability, as discussed in section IV.B of the final preamble. That is, the limitations must be established through a process that includes notice to and an opportunity to comment by the public and the EPA, and they must be practicably enforceable.

Comment: The commenter states that the definition of "relevant standard" should be revised to clarify that a State's air toxics regulations do not become federally enforceable through this section if these requirements exceed Federal standards. The commenter believes that § 63.1(a)(3) of the rule, which addresses the relationship of part 63 standards to more stringent standards that may be established under other provisions of the Act or by the States, should also be revised to clarify this point. The commenter believes that only if a State rule has been determined to be equivalent through the section 112(l) process should it become federally enforceable.

Response: Pursuant to section 112(d)(7) of the Act, no emission standard or other requirement promulgated in part 63 prevents a State from issuing a standard or requirement that is more stringent than the Federal requirement. If such a standard is approved pursuant to section 112(l), the requirements of the standard become federally enforceable. The definition of "relevant standard" has not been revised as suggested by the commenter because "relevant standard" refers only to standards, whether Federal or State, that have been established (or approved) under the authority of section 112.

Comment: The commenter claims that the definition of "federally enforceable" in the proposed General Provisions differs from that in the proposed section 112(j) rule. The commenter suggests that only one such definition should appear, and that the definition should appear in subpart A.

Response: A discussion of this issue appears in the preamble to the final General Provisions rule. The EPA intends that the definition of federally enforceable in the General Provisions should apply to all requirements developed pursuant to section 112 including standards developed under section 112(j) and section 112(g). The final regulations implementing section 112(j) of the Act will defer to the definition of federally enforceable in the General Provisions.

Comment: The commenter does not agree that it will always be the case that a blanket emissions limitation cannot be verified or enforced sufficient to satisfy the Federal enforceability requirement. Instead, the commenter believes that it may be possible for a source, through enhanced monitoring and compliance certifications, to operate under a facility-wide emissions cap without other limitations. The commenter believes that this issue should be explored more fully, and that the Agency's statement is premature.

Response: The EPA's policy is that it is difficult for blanket emission limitations to be practicably enforceable. Practicable enforceability is an essential component of Federal enforceability. As the commenter states, it is possible in some cases that measures could be taken that would make a blanket emission limitation practicably enforceable. However, this determination will be left to individual standards for specific source categories. In the preamble to the final General Provisions, the EPA states that blanket emission limitations are not generally acceptable limits on a facility's potential to emit HAP.

Comment: The commenter is concerned that without some proceeding to establish that a source's potential to emit considering federally enforceable controls actually falls below applicability thresholds, major sources that should be controlled will escape regulation. The commenter requests that the final General Provisions require sources seeking to escape regulation because of federally enforceable controls to

undergo permitting in which the State must make findings that controls in the sources' title V permits do appropriately limit the sources' potential to emit. Furthermore, the commenter believes that owners or operators must agree not to subject any controls relied upon for limiting potential to emit to minor permit amendments or changes under the operational flexibility provisions of the part 70 permit rule, and that this agreement must become part of the permit.

Response: The Agency has not made changes in the rule specifically in response to this comment. Limitations and conditions that meet the criteria for Federal enforceability, including those in title V operating permits, will also include monitoring, reporting, recordkeeping and other appropriate requirements necessary to demonstrate compliance. These will provide demonstration that limits agreed to by the source to limit potential to emit are actually being met. Further, the EPA views it as a source's responsibility to ensure its continuing status as an area source. If a source that is initially an area source subsequently increases its emissions (or its potential to emit) such that it becomes a major source, it is incumbent upon the source to notify the EPA or delegated authority and come into compliance with applicable major source standards within the timeframe specified in the standard (or in the General Provisions). Failure to do so would be a violation of the standard, as well as of the potential to emit limits, and would subject the source to penalties for the period of noncompliance.

Comment: The commenter states that the EPA needs to clarify which controls that reduce emissions and limit a source's potential to emit are acceptable. The commenter is concerned about sources implementing less effective controls before a MACT is promulgated in order to reduce the potential to emit and fall below the applicability threshold for appropriate NESHAP.

Response: Information about what the Agency considers as

acceptable limits and how the limits must be formulated to qualify as federally enforceable is available in guidance materials prepared for the EPA's New Source Review program. (Refer to: "New Source Review: Prevention of Significant Deterioration and Nonattainment Area Guidance Notebook," Air Quality Management Division, U.S. EPA, January 1988 and any subsequent updates. Electronic versions of this document are available for download from the EPA's Technology Transfer Network New Source Review (NSR) bulletin board. To obtain more information on how to access the NSR bulletin board, contact Ms. Paula Federici, who is the technical support contractor for the bulletin board, by calling (919) 941-0333.) The question of when the Federal enforceability of controls must be established in order to limit potential to emit is being addressed in a separate rulemaking on potential to emit that was described earlier.

2.1.5 Other Applicability Issues

Comment: A commenter expressed concern about language in the preamble to the General Provisions proposal that states "...all sources are responsible for maintaining a record of their determination of whether they are major or area sources..." [see 58 FR 42768]. The commenter believes that this could be interpreted to mean that any source, whether regulated by a part 63 standard or not, would be required to make this determination. The commenter suggests that the EPA clarify that only a source within a category of sources for which a part 63 standard has been established should have to make this determination.

Response: The EPA believes that the language of the final rule is clear that only owners of sources subject to a part 63 standard will have to submit an initial notification of applicability, but all owners or operators must make an initial determination of major/area source status under the General Provisions and under the title V permit program. Section 63.1(b) of the rule establishes the requirements for

initial applicability determinations for part 63. This section states that the provisions of part 63 and the General Provisions apply to the owner or operator of any stationary source that emits or has the potential to emit any HAP listed in or pursuant to section 112(b) of the Act and that is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to part 63. Section 63.9(b), which has been revised in the final rule, establishes initial notification requirements for affected sources who become subject to a relevant standard. Under § 63.9(b)(2)(v), the owner or operator of such a source must submit a statement of whether the affected source is a major source or an area source. In order to comply with the applicability requirements under § 63.1, all sources must make a determination of whether they are major or area sources, not only the sources that meet the criteria of § 63.1(b). The notification requirements further clarify that only affected sources subject to a relevant standard must submit a declaration of whether the source is major or area.

Comment: The commenter states that the EPA needs an approach to applicability that ensures that all sources within each major source are subject to regulation. The commenter also believes that all plants subject to MACT standards should be required to designate all sources within the plant as belonging to one or another category on the source category list within one year of publication of the General Provisions. The commenter suggests that if an owner or operator believes that some emission points within the plant belong to no listed source category, the owner or operator should be required to prove that the point is not amenable to control strategies for any other listed source categories, and the EPA should regulate these points separately.

Response: The EPA has attempted, in accordance with the requirements of section 112(c) of the Act, to list categories accounting for all major sources of HAP. If gaps are

discovered in that list, due to the acquisition of new information, the EPA will revise the list. It is not feasible to require all owners and operators of major sources to designate which MACT standard will apply to each and every emission point within a plant because, until the MACT standards are written, it will not be possible to be certain which standard will cover which point. The process of determining whether all sources within a major source are covered by MACT standards will therefore be an evolving process, and it cannot be determined with any certainty at the beginning of the process.

Comment: The Agency received several comments on the applicability provisions of § 63.1. Many commenters found this section to be confusing or ambiguous, and these commenters suggested clarifications. Several commenters were concerned with proposed § 63.1(b) regarding the initial determination of part 63 applicability, and felt that it did not accurately state which sources are subject to the General Provisions. One commenter also was confused by §§ 63.1(a)(14) and (c)(1). Section 63.1(a)(14) addressed the relationship between requirements established pursuant to procedural regulations in part 63 to requirements that are promulgated in part 63. Section 63.1(c)(1) addressed applicability after a relevant part 63 standard has been set. Another commenter suggested that language should be incorporated to indicate that only major sources are affected by this rule.

Response: In response to these comments, the EPA reexamined § 63.1 of the General Provisions carefully, and the Agency has made several revisions designed to answer the concerns of commenters who felt the intent was unclear. Changes have been made in paragraphs (a), (b), and (c) of § 63.1. These revisions have clarified who is subject to the General Provisions and when, by indicating that a source must be subject to a standard, limitation, prohibition or other requirement under part 63 to be subject to the General

Provisions (except that nonregulated sources must keep a record of their applicability determination). The Agency also made other clarifying revisions to make this section easier to understand. Regulated area sources, in addition to major sources, are affected by the General Provisions. Accordingly, the EPA did not adopt suggested language that would indicate that only major sources are affected by the rule.

Comment: The commenter believes that sources should be given as much time as possible to determine their MACT applicability status. The commenter believes that such an approach provides incentives to industry to reduce their emissions and will effect emissions reductions sooner than would be otherwise possible. The commenter believes that the MACT applicability determination date should be the later of the operating permit issuance date or the MACT compliance date.

Response: A source's MACT applicability status is determined based on its potential to emit HAP, considering controls. Based on comments received on the proposed General Provisions, the EPA has decided to propose a supplemental rule that would amend the General Provisions to address more fully how and when sources must determine their status as major or area (subject or nonsubject) sources. Until final action is taken by the EPA on this supplemental rulemaking, owners and operators that become subject to a relevant part 63 standard should first consult the language of the relevant standard on the timing of the major/area source determination. In the absence of specific guidance in a relevant standard, and as an interim measure until the supplemental rulemaking is finalized, a determination would have to be made by the time of the initial notification requirement in § 63.9(b) of the General Provisions. This section requires that the initial notification submitted by sources subject to a relevant standard include a statement indicating whether the source is a major or an area source.

Comment: One commenter is confused about the applicability relationship as defined by § 63.1, and the applicability of the proposed Industrial Process Cooling Towers (IPCT) regulation (58 FR 43028, August 12, 1993). The preamble to the proposed General Provisions specifies that if a source does not emit (or have the potential to emit) HAP, it is not affected by part 63 rules. However, the IPCT proposal applies to all cooling towers regardless of whether they use chromium water-treatment chemicals. The commenter believes that this is an inconsistency between the two proposed rules.

Response: The General Provisions establish a framework of general applicability criteria. The individual standards define specific applicability criteria for each source category. In the case of the IPCT proposed rule (58 FR 43208, August 12, 1993), the definition of affected source is based on the fact that all IPCT are capable of emitting chromium if they use chromium-containing water treatment chemicals. Therefore, for the purposes of that rule, all IPCT are considered affected sources. However, in the case of the General Provisions, a generic approach has been taken with respect to the definition of affected source. This does not mean that the two rules are in conflict; just that the individual standard has taken a more exacting approach to the definition of affected source, which is appropriate.

Comment: The commenter states that the definition of "alternative emission standard" does not recognize standards under State or local programs where delegation has been granted. The commenter wonders if, in such cases, the General Provisions do not apply to sources subject to such programs.

Response: The definition of "alternative emission standard" contained in the General Provisions relates only to an alternative standard authorized under section 112(h)(3) of the Act (if in the judgement of the Administrator it is not feasible to prescribe or enforce an emission standard). Such a standard could be a design, equipment, work practice, or

operational standard, or combination of these. It does not apply to State and local standards that have been approved by the EPA unless they also are covered by section 112(h)(3). However, § 63.1(b)(1) of the General Provisions provides that the General Provisions apply to the owner or operator of a stationary source that is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to part 63. As the provisions of programs that have been delegated to States will be considered federally enforceable requirements pursuant to part 63, the General Provisions will apply to sources subject to such programs.

Comment: The commenter believes that when subparts C and E are promulgated, the EPA should repeat the comment period for the sections of subpart A that reference or overlap with these subparts. The commenter finds it difficult to comment accurately on subpart A without having the promulgated versions of subparts C and E to determine their interactions and potential overlaps.

Response: Cross-references to subparts C and E were included in the proposed General Provisions merely as a convenience to inform readers where they may locate other general information in part 63. At present, no rules have been proposed or promulgated in subpart C; however, subpart E was promulgated at 58 FR 62262 on November 26, 1993. These cross-references contained no substantive requirements above and beyond the requirements contained in subpart E or that would have been contained in subpart C. Furthermore, the content of subpart E as promulgated generally does not overlap with the content of subpart A. Where some overlap is present (e.g., definitions), the EPA wrote subpart E to rely on or to be consistent with the General Provisions in subpart A. Hence, the EPA believes it is not necessary to reopen the comment period for subpart A. Cross-references to subpart C have been removed from the General Provisions because no rule

has yet been promulgated in subpart C.

Comment: Several commenters believed that throughout subpart A, wherever the word "categories" appears, the EPA should add "or subcategories" in order to be consistent with section 112(c)(1). Two commenters made this comment in connection with the applicability provisions in § 63.1 of the proposal. In addition, one commenter suggested that "or subcategories" should also be added to the definition of "stationary source." These commenters believed that the General Provisions should be clear that it is referring to both categories and subcategories of sources when it makes any statements regarding the provisions which apply to sources.

Response: On July 16, 1992 the Agency published the Notice of the Initial List of Categories of Sources pursuant to section 112(c)(1) of the Act (57 FR 31576, July 16, 1992). In this notice, the EPA responded to several comments regarding the use of the terms "category" and "subcategory," and the rationale used in that notice also applies to this rulemaking. "Category" and "subcategory" are not defined in section 112 of the Act, but these terms are generally used together, seemingly interchangeably. There are, however, places where only the term "category" is used. For example, sections 112(c)(9)(A) and 112(c)(9)(B)(i) provide for the deletion of categories of sources only, and section 112(f)(2)(A) obligates the Administrator to promulgate residual risk standards only for categories of sources. In the initial list of source categories, the Agency decided to use the term "category" to designate all of the groupings of HAP-emitting sources included on the list. The EPA decided that the exclusive use of the term "category" would clarify the applicable requirements of section 112. This decision does not affect the degree of disaggregation of industry groups in the list of source categories, or the authority of the Agency to distinguish among classes, types, and sizes of sources in establishing emission standards, nor does the

decision affect the Agency's authority to define subcategories of sources at a later date. Because of the decisions laid out in the July 16, 1992 notice, the EPA believes that the terminology used in the General Provisions appropriately refers to "categories," and this terminology designates all groupings of HAP-emitting sources on the list of source categories. The addition of the phrase "or subcategories" to the language in the General Provisions is unnecessary and potentially confusing.

Comment: One commenter argued that the revisions made to part 61 to bring it up-to-date with the amendments to the Act should not apply to phosphogypsum stacks because section 112(q)(2) of the Act exempts such stacks from the amendments.

Response: The EPA disagrees with the commenter. Section 112(q)(2) provides that no standards shall be established under the 1990 amendments to section 112 for phosphogypsum stacks. The amendments to part 61 are consistent with that language. The amendments to part 61 that relate to permit issuance are necessitated by the requirements of title V of the Act which applies to all sources of hazardous air pollutants including those regulated under the old Act. The other amendments are intended to aid sources in meeting the requirements of both part 61 and part 63 where applicable. They do not impose new standards on part 61 sources.

2.2 DEFINITIONS

2.2.1 Administrator

Comment: One commenter said that the term "Administrator" should refer only to the EPA Administrator, and a different term should be used to refer to a delegated State.

Response: The term "Administrator" in the General Provisions is defined as "...the Administrator of the United States Environmental Protection Agency or his or her

authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part)." This use of the term is consistent with its past usage, and the Agency sees no reason to alter this definition in response to the comment.

2.2.2 Alternative Test Method

Comment: One commenter noted that the definition of "alternative test method" refers to a demonstration of equivalency. This definition should recognize any test method accepted as equivalent in a section 112(l) delegation request. Special procedures should be identified for such demonstrations, in order to expedite approval of delegation requests.

Another commenter, who opposed the use of Method 301 to verify an alternative test method if the owner or operator and the reviewing authority reach agreement on departures from a standard test method, said that, in any case, the method is incorrectly referenced. The commenter said that all references to Method 301 should either refer to a location where the method is already published or that the EPA should publish Method 301 as an appendix to part 63.

Response: The first commenter is incorrect that the definition of "alternative test method" refers to a demonstration of equivalency. Instead, the definition refers to any method that has been demonstrated to "produce results adequate for the Administrator's determination...." In order for an alternative test method to be used for compliance purposes, whether or not a section 112(l) delegation request is involved, it must be reviewed during a formal EPA review and approval process at the national level. The Administrator has not delegated this authority under section 112(l).

Method 301 has been proposed, subjected to public comment, and promulgated with the Early Reduction rule (57 FR 61970, December 29, 1992) as appendix A to part 63.

2.2.3 Continuous Emission Monitor

Comment: One commenter noted that the lack of understanding regarding source category-specific MACT requirements related to enhanced monitoring and compliance certification makes it impossible to provide meaningful comments on the definitions related to continuous monitoring. For example, the use of the term "continuous" may require a separate definition to avoid a situation where enhanced monitoring requirements modify the underlying substantive compliance requirements. Alternatively, a definition for "parameter monitoring" should be added to distinguish it from continuous emission monitors.

According to another commenter, the proposed definition of "continuous emission monitoring" appears to include intermittent monitoring, which contradicts the implication that emissions should be monitored continuously. Another commenter suggested that the EPA should add a definition of "monitoring" to deal with methods of monitoring that do not involve "continuous" measurement systems. The EPA should start with the presumption that the least expensive method that provides the needed data is acceptable.

Response: As discussed in section 2.6.2, the definition of "continuous monitoring system" has been clarified and states that a CMS "may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation."

The EPA strives to ensure that the most cost-effective monitoring methods that provide the needed data are allowed. This analysis occurs as part of the development of individual standards.

Comment: Some commenters noted a discrepancy between the definitions of "continuous emission monitoring system" and

"continuous parameter monitoring system," which require the owner or operator to maintain "permanent" records, and § 63.10(b)(1), which specifies a 5-year record retention period. The definitions should be revised to delete the word "permanent." Alternatively, the EPA should add a definition of "permanent record" to clarify requirements related to definitions of continuous emission monitoring system (CEMS), etc. that require the source to maintain "permanent" records. The definition could read: "Permanent record" means a record capable of enduring throughout the mandatory retention period specified in a standard established under section 112 of the Act.

Response: The proposed definitions of CEMS and continuous parameter monitoring system included the word "permanent" to mean provided in a permanent form to be available to the source owner or operator and the enforcement agency at any time. Section 63.10(b)(1) establishes the record retention period, which is 5 years. However, in order to clarify the final rule, the word "permanent" has been removed from the definition of CEMS and continuous parameter monitoring system.

2.2.4 Emission Standard

Comment: Commenters said that the definition of "emission standard" should not include a reference to proposed standards because proposed standards are not enforceable.

Response: The EPA agrees with the commenters, and the definition has been revised to delete the reference to proposed standards.

2.2.5 Equivalent Emission Limitation

Comment: One commenter was very concerned that the definition of "equivalent emission limitation" in § 63.2 was expanded in § 63.2 to include case-by-case MACT under section 112(g) of the Act. The commenter stated that the term "equivalent emission limitation" was included only under section 112(j) of the Act, and the commenter (a State agency)

revised its statutes to allow a title V program to be implemented. These revisions require detailed procedures for the adoption of State standards more stringent than Federal standards and for adoption of equivalent emission limitations. These procedures include detailed technical and economic analyses and a costly peer review process. Limiting the term "equivalent emission limitation" to its original usage in the Act will make it easier for the State to avoid cumbersome procedures in applying section 112(g).

Response: The term "equivalent emission limitation" is used in the General Provisions to define relevant standards and the applicability of the General Provisions to case-by-case MACT standards under sections 112(g) and 112(j) of the Act. The Agency believes that it is necessary to refer to section 112(g) in the definition to make it clear that the General Provisions apply to case-by-case MACT standards under section 112(g), and it, therefore, has not made the change suggested by the commenter. In any case, the draft proposed section 112(g) modification provisions, which will be published in the Federal Register soon, use the term "MACT emission limitation" and state that this term means "equivalent emission limitation." Therefore, the Agency does not believe that removing the section 112(g) reference from the definition of "equivalent emission limitation" will address the commenter's fundamental concern.

2.2.6 Fugitive Emissions

Comment: One commenter said that the proposed definition of "fugitive emissions" appears to serve no purpose nor does it include those emissions normally considered fugitive such as leaks from valves, flanges, pump seals, and other sources usually regulated by equipment leak rules. Another commenter said that the EPA provided no justification to exclude emissions from equipment leaks and that the definition should be consistent with past definitions, although another commenter said that the resulting limited definition would be

too general. This third commenter said that the definition should be revised to exclude the words "that could reasonably be . . . practices."

Response: The definition of "fugitive emissions" is important because fugitive emissions are used in determining a source's status as major or area. The definition was revised to clarify this point. However, the EPA agrees that the language regarding exceptions of equipment leaks is not needed, and it was deleted from the definition. The revised definition of "fugitive emissions" is as follows:

"Fugitive emissions" means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source."

2.2.7 Issuance

Comment: Commenters said that the definition of "issuance" should be changed to reflect that issuance is upon receipt of the final permit by registered mail to ensure that the source has received the permit and knows that it has been issued.

Response: The definition of "issuance" in the final rule has been changed to clarify that issuance of a part 70 permit will be defined in accordance with the requirements of the applicable, approved part 70 permit program in the State in which the permitted source is located.

2.2.8 Lesser Quantity

Comment: Commenters said that the proposed definition appears to allow incorrectly for different lesser quantities to be established for different standards. The commenters said that the definition should be revised to refer to the publication of a "lesser quantity" in subpart C of part 63 so that all sources have common and known major source criteria. One commenter added that the phrase "or may be" should be deleted from the definition because section 112(a)(1) of the

Act should be interpreted to mean that a source is subject to the lesser quantity if it "emits," not if it "may emit."

Response: The EPA is considering establishing lesser quantity emission rates (LQER) for specific HAP. For some pollutants, the EPA is considering whether it would be appropriate to establish an LQER for a specific source category, because the LQER would better reflect actual exposure that would occur. For certain pollutants, an LQER would be established only for source categories that are determined to have emissions of "high risk" pollutants to which people are exposed. The EPA also believes that there may be advantages to establishing LQER by pollutant, so that the LQER would apply to all source categories emitting the pollutant. Both of these options are being considered. The comments received will be taken into consideration in making a decision about the best approach.

By definition, a source is major if it "emits or has the potential to emit considering controls..." greater amounts of HAP than those listed in section 112(a)(1) of the Act. It is the EPA's intent to be consistent with the definition of major source given in section 112(a)(1). Therefore, the EPA believes that it is appropriate for an LQER to define a source that emits, or has the potential to emit considering controls, as a "major source." Thus, the phrase "or may be" should remain as part of the definition.

2.2.9 Malfunction

Comment: Several commenters objected to the proposed definition of malfunction. One commenter said that the final rule should define "malfunction" as a failure that occurs in spite of regular maintenance and repair and proper operation of equipment and control devices. Otherwise, the burden is on the State agency or the EPA to prove a causal link between shoddy maintenance and the exceedance experienced, which would be extremely difficult. Other commenters said that the EPA should provide guidance on how it will determine whether a

malfunction has been caused by poor maintenance or careless operation.

Other commenters said that the exclusion of any equipment failure that is caused "in part" by "poor maintenance or careless operation" is ambiguous and could easily be misinterpreted, particularly in complex situations. These commenters suggested limiting the responsibility of the owner or operator to those failures that are caused "primarily" or "dominantly" by poor maintenance or careless operation or deleting the exclusion altogether.

Response: The EPA has reviewed carefully the "malfunction" definition with the commenters' concerns in mind, but the Agency does not believe a revision to the definition is warranted. The General Provisions definition is generic and cannot address all situations that might occur. However, when the definition of malfunction has a specific implication to an individual source category, the definition may be addressed again in the individual standard that regulates that source category. The EPA may provide further guidance addressing the commenters' concerns regarding ambiguity in the context of individual rulemakings for source categories.

Comment: One commenter requested that the exclusion of poor maintenance and poor operation from the definition of "malfunction" be added to the part 60 General Provisions.

Response: The EPA agrees with the commenter, and the change has been made to the definition of "malfunction" in subpart A of part 60.

Comment: One commenter requested that the definition of "malfunction" be broadened to include "any other equipment" that causes excess air emissions. Alternatively, another commenter objected to the inclusion of the terms "process equipment or a process" because these units can experience many types of malfunctions that do not affect air emissions.

Response: The Agency has determined that the definition,

as proposed, has the appropriate scope. The Agency intends that any equipment that could result in excess air emissions be covered by the definition. As explained in section 2.4.8, clarification has been provided regarding the timing and nature of activities that are required in response to a malfunction.

2.2.10 Materially Consistent

Comment: Commenters requested that § 63.10(b)(2)(v) be revised to allow sources to keep only those records that demonstrate compliance with the affected source's startup, shutdown, and malfunction plan for all actions that are "materially" consistent (discussed in section IV.F.3 of the promulgation preamble), instead of for all actions that are "completely" consistent.

Response: As discussed in section 2.4.8, the EPA has decided to delete the word "completely" in § 63.10(b)(2)(v) of the final rule. The Agency believes that this word is not necessary and should not be a focus of concern by commenters. The language in the final rule adequately conveys the Agency's intent that actions taken during periods of startup, shutdown, and malfunction be consistent with the source's plan.

2.2.10 One-Hour Period

Comment: One commenter said that the EPA should replace the proposed definition of "one-hour period," which appears to be a rolling average, with the part 60 definition that defines "one-hour period" as any 60-minute period commencing on the hour to avoid an onerous regulatory burden.

Response: The EPA agrees with the commenter, and the definition of "one-hour period" has been revised in the final rule to be consistent with the part 60 definition.

2.2.11 Owner or Operator

Comment: The definition of "owner or operator" should be clarified to state that if the owner is not the same entity as the operator, then the term should refer to the permit holder.

Response: The EPA disagrees and has not changed the

definition. The EPA retains the discretion to take enforcement action against whomever is found to be responsible for a violation. That person may be the operator of a plant, not the owner or permit holder.

2.2.12 Performance Test Definitions

Comment: Commenters said that the EPA should include a definition of "performance test" in the General Provisions and state that a performance test is limited to tests that are referenced in a part 63 NESHAP. Another commenter requested clarification of confusing terminology in § 63.7 related to "performance evaluation," "performance test," and "performance evaluation test."

Response: The EPA agrees with the commenters that the terminology is incomplete and has added definitions to indicate that a performance test is the demonstration of compliance as specified in the applicable regulation and a performance evaluation refers to the testing required to certify a continuous monitoring system. The definitions of "performance evaluation" and "performance test" have been added to § 63.2 and are worded as follows:

"Performance evaluation" means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

"Performance test" means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the applicable regulation.

2.2.13 Permit Revision

Comment: Commenters said that the proposed definition of "permit revision" includes both "permit modifications" and "administrative permit amendments," which are very different procedures and should not be included in the same definition. This definition should be deleted until individual MACT standards are promulgated and a clearer definition can be developed.

Response: The EPA disagrees with this commenter. The definition of "permit revision" in the General Provisions is consistent with that in the part 70 operating permit regulation, and the EPA believes this definition is appropriate.

2.2.14 Relevant Standard

Comment: Some commenters said that the proposed definition of "relevant standard" could be misinterpreted to mean that if there is a standard applicable to any portion of a stationary source, it is relevant to other portions. The definition should state that the standard is applicable to "the" source rather than any portion of "a" source.

Response: The EPA agrees with the commenters and has made the suggested changes to the final definition.

Comment: According to some commenters, the last sentence of the proposed definition implies that the General Provisions are "relevant standards," when, in fact, they are predrafted provisions that can be incorporated into relevant standards. The commenters suggested deleting this sentence. Another commenter said that the General Provisions should be revised to make it clear that State standards are not relevant standards to avoid the possibility that State standards would be considered federally enforceable.

Response: The EPA disagrees with the comment that the General Provisions are only predrafted provisions that must be incorporated into relevant standards. As discussed in section IV.C.1 of the promulgation preamble, all parts of the General Provisions apply to an affected source regulated by an applicable standard, unless otherwise specified by the particular standard. Therefore, the last sentence of the definition is retained. State standards that have been approved by the EPA under subpart E of part 63 pursuant to section 112(1) of the Act will be considered "relevant standards" under part 63, and they will be federally enforceable.

2.2.15 Responsible Official

Comment: Commenters said that the definition for "responsible official" should not distinguish the authority of individuals managing facilities based on the number of employees or annual sales. Many sites will not meet these artificial designations and would thus be required to receive specific approval from the Administrator. Instead, the title IV definition of a "responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to . . . submissions of and compliance with permits, permit applications, and compliance plans" is more logical and easier to implement. This change could also eliminate potential conflicts for sources that are subject to both the title IV and title III rules and might have more than one "designated representative" under title IV.

Other commenters requested additional clarification of the definition. For example the use of "designated representative" in paragraph (4) is not defined and the relationship between this paragraph and paragraphs (1) through (3) is unclear. Does paragraph (4) override the first three paragraphs or vice versa? The commenter suggested deleting paragraph (4).

Another problem is that the rules do not say who may be the "responsible official" for a partnership if each of the partners is a separate corporation. The commenter suggested that if the general partner is a corporation, the corporate responsible official defined per paragraph (1) would serve as the "responsible" official in this case.

One commenter said that the definition should be reorganized so that the more general definition, i.e., that of the part 70 permit rule, comes first.

Finally, one commenter said that the liability criteria mentioned in paragraph (4) should be limited to monitoring, recordkeeping, and reporting requirements.

Response: The EPA deleted paragraph (4), as suggested by one of the commenters, to eliminate confusion, as the other paragraphs adequately describe a "responsible official." Because paragraph (5) (as proposed) references parts 70 and 71, title V should resolve any perceived potential conflict, as another commenter mentioned, between title IV and title III.

The EPA retained the reference to larger corporations in paragraph (1), because it is felt that smaller corporations should have less of a need to delegate the duties of a "responsible official" to someone other than the named corporate officials. The EPA assumes that smaller corporations will rarely seek the approval of the Administrator for an alternative person to be the "responsible official," so this should not be burdensome to the sources or the Agency.

Another commenter questioned what to do if each of the partners in a partnership is a corporation. The EPA intended, as the commenter recommended, that the partnership can choose which of the corporate partners is the "responsible official" and allow that corporation to designate a "responsible official" per paragraph (1).

2.2.16 Visible Emissions

Comment: The definition of "visible emissions" should reference Method 22 from part 60.

Response: Method 22 has very specific applications that are not universal and do not coincide with the more commonly applied Method 9. Therefore, the proposed definition of "visible emissions" is appropriate, and no changes have been made in the final rule.

2.3 CONSTRUCTION AND RECONSTRUCTION

2.3.1 Definitions

Comment: One commenter requested that the definition of "construction" clarify the status of an existing source which is moved to a new location.

Response: Under the General Provisions, whether an affected source is subject to MACT for new sources or MACT for existing sources depends on when construction or reconstruction of that source commenced in relation to the proposal date of the relevant emission standard. In other words, affected sources for which construction or reconstruction is commenced before the proposal date would be considered existing sources subject to MACT for existing sources, and affected sources for which construction or reconstruction is commenced after the proposal date would be considered new sources subject to MACT for new sources. If a new or existing source subsequently is relocated, and if no other changes are made to the source (other than a change of ownership) as a result of the relocation or in the process of relocation, that source generally would continue to be subject to the same emission standard requirements that it was subject to under the relevant standard before the relocation took place. That is, if it were subject to MACT for new sources before the move it would be subject to MACT for new sources after the move as well. In this context, "changes" to the source mean any changes to the source's process or control equipment, method of operation, or emissions. It is possible, however, that an existing source that relocates could become subject to MACT for new sources if, in the process of relocating, the source is reconstructed. It is also possible that a previously unaffected source could become subject to the requirement to make a case-by-case MACT determination if changes to the source during the relocation trigger the applicability criteria for a construction, reconstruction, or modification under section 112(g) of the Act.

These examples are not meant to be exhaustive of all possible exceptions to the general statement that relocated sources (or sources that change ownership) retain their "baseline" applicability status under a relevant promulgated emission standard or under the provisions of section 112(g).

If an owner or operator has any doubt about the applicability status of a relocated source, he or she should contact the appropriate EPA Regional Office or delegated State or local authority for an applicability determination. Because applicability determinations must be made on a case-by-case basis, the Agency believes it is not appropriate to change the definition of "construction" in this regard.

Comment: Some commenters suggested that the term "or portion of a stationary source" means that minor construction activity could constitute construction. Another commenter suggested that a de minimis provision be included to exempt minor construction or reconstruction projects from notification requirements.

Response: The definition of "construction" in the final rule has been changed to limit the scope of the General Provisions requirements for newly constructed sources to "affected sources" as used within the framework of part 63. The EPA believes this change clarifies the Agency's intent regarding these provisions. The revised definition is consistent with the definitions for "construction" in the General Provisions for parts 60 and 61. In addition, § 63.5(b)(3) of the General Provisions final rule has been changed to clarify that only constructed or reconstructed affected sources (as defined in each emission standard) are subject to notification requirements even if those sources are affected area sources. As mentioned in the previous comment response, applicability determinations for constructed and reconstructed sources are made on a case-by-case basis by the implementing authority. When in doubt, owners or operators should contact the appropriate authority for a determination.

Comment: Several commenters believed the definition of construction should refer only to physical changes that have an impact on air emissions.

Response: Under the General Provisions, a preconstruction application is required to be submitted for

all activities that meet the definition of "construction" of a new major affected source, the "reconstruction" of a major affected source, or the "reconstruction" of a major source such that the source becomes a major affected source subject to the relevant emission standard. The purpose of the preconstruction review under section 112(i)(1) is to ensure that constructed and reconstructed sources will be able to comply with the relevant emission standard if they are properly built and operated. The significance of the air emissions from that source has already been accounted for by virtue of the fact that the subject source is included in the regulated source category and that it is a major source of HAP.

Comment: In the proposed definition of construction, the adjective "on-site" only modifies fabrication. The language should be changed so that "on-site" clearly refers to fabrication, erection, and installation.

Response: The construction regulations are concerned with on-site fabrication, erection, and installation of permanent structures. Off-site work should not be limited to only the word "fabrication" in the definition of "construction." Other activities may occur off site. The EPA cautions sources that choose to enter contracts that they may incur substantial loss if the construction application is denied or withdrawn. The EPA does not recognize actions taken at the risk of the source as an allowance to proceed with construction of an affected source. The definition wording has been amended to expand the understanding of "on-site" so that it clearly applies to "erection" and "installation" as well as to "fabrication."

Comment: One commenter noted that the proposed definition of construction applies to a stationary source that "is or may be subject to the standard." The commenter believes that "or may be" should be removed from this definition since it creates unnecessary confusion. Another

commenter indicated that the definition of "construction" should be modified to indicate that it is applicable to requirements established "under this part," rather than "pursuant to section 112 of the Act."

Response: There may be situations where a source is not entirely certain if a planned stationary source will be subject to a part 63 standard. If there is any possibility that a stationary source would be subject, then a preconstruction application should be submitted. For the purposes of implementing section 112 of the Act, reference to requirements established "pursuant to section 112" is not interchangeable with requirements established "under this part." Specifically, the term "pursuant to section 112 of the Act" is used to cover situations where States may establish federally enforceable requirements pursuant to section 112, for example, under sections 112(g) and 112(j) and under subpart E of part 63. The definition of "reconstruction" has been changed to reflect the promulgated subpart E rule with regard to how and when a State may receive EPA approval to establish certain requirements that will be considered federally enforceable pursuant to section 112 (i.e., the proposed reference to "State with an approved permit program" has been replaced with "a State"). In addition, as discussed in a previous comment response, the EPA has revised the definition of "construction," and the phrases identified by the commenters have been deleted.

Comment: Several comments were received objecting to the consideration of economic feasibility in the definition of reconstruction. These commenters felt the definition of reconstruction should be based entirely upon the relative capital expenditure required for the project. Another commenter was concerned that the consideration of economic and technical limitations might lead to relieving a source of compliance obligations, and that the EPA needed to clarify how it will consider "economic and technical limitations" in

approval of reconstruction.

Response: Although the EPA acknowledges these concerns, the Agency will continue to consider technological and economic feasibility when making a determination of reconstruction. However, the Agency does believe that the final decision of technological or economic infeasibility should rest with the Agency. Therefore, § 63.5(d)(3)(v) has been changed to require sources that claim it is technologically or economically infeasible for them to meet a promulgated emission standard to submit information that is adequate to support their claim to the Administrator's satisfaction.

Comment: The General Provisions should not require preconstruction review for sources that begin construction after a MACT standard is proposed, but before it is promulgated. The commenter believes reconstruction should be defined only with respect to activity after the effective date of a section 112(d), (f), or (h) standard.

Response: Sources that initiate activities that constitute construction or reconstruction between the proposal and promulgation dates of a standard are subject to the new source requirements within that subpart, and preconstruction plans are required to be submitted to the Administrator after the effective date of the standard, provided that the source had not started up before the effective date. Sources that start up before the standard's effective date (i.e., promulgation) are not required to undergo preconstruction review and approval under the General Provisions. The EPA believes that the proposal of a standard provides ample notification to an owner or operator as to the requirements for new sources subject to that standard, and that construction or reconstruction can reasonably proceed with the proposed standard in mind. The requirement to submit preconstruction plans allows the Administrator to ensure that when the sources start up they will comply with relevant

standards. However, § 63.6(b)(3) of the General Provisions allows sources that commence construction or reconstruction between proposal and promulgation of a standard 3 years to comply with the relevant emission standard if:

- (i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; and
- (ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

In addition, the requirement that these sources undergo preconstruction review prevents the situation where a source could install a small permanent structure to claim commencement and circumvent the intent of the preconstruction review requirement.

Comment: The definition of reconstruction should be clarified to indicate that it applies only to existing sources.

Response: The Agency does not believe that such a change is appropriate. The Agency believes that sources that meet the definition of "new source" also may be reconstructed.

Comment: Two commenters objected to the inclusion of the estimated life of the replacement as a criterion to be considered in the Agency's approval of reconstruction.

Response: The EPA believes that estimated life of replacement equipment is a valid criterion to be considered in the approval of reconstruction. The Agency would point out to the commenters that this is only one of a list of criteria contained in § 63.5(e)(1) that is to be considered.

Comment: Several commenters objected to the reliance upon Internal Revenue Service (IRS) documents and regulations in the proposed definition of "capital expenditure." Many commenters believed the 1981 IRS document reference is, or will become, outdated. Others believed this definition should be based on more accessible and understandable criteria. While this was a concern among affected industries,

environmental agencies felt that they did not have the means to verify this type of information.

Response: The definition of "capital expenditure," which referenced the IRS documents in question, has been deleted from the final rule, because the term "capital expenditure" is not necessary for the General Provisions.

Comment: Several comments were received on the definition of "commenced." One commenter indicated that the definition of commenced should specifically exclude activities such as planning, design, ordering of equipment and materials, etc. Another stated that the definition of commenced undercuts the ability of a source to hire a contractor to order materials and equipment, and that the prohibition should be limited to the commencement of on-site construction activities, if at all.

Response: "Commenced" is defined in terms of when the owner or operator has started "a continuous program of construction or reconstruction." Because construction and reconstruction are defined to apply to on-site activities, there is nothing in the definition of commenced that would prohibit activities such as planning, design, etc. by the owner or operator or by a contractor.

Comment: "Source" must be defined for the purposes of clarifying the scope of the rule for construction or reconstruction provisions.

Response: The final rule has been revised to clarify that the provisions of §§ 63.5(b)(3) and (4) apply to "affected sources," and, thus, the scope of the construction and reconstruction requirements in the General Provisions is dependent upon the definition of "affected source." As stated in the definition of "affected source," each relevant standard will define the "affected source" for the purposes of that standard. The scope of construction or reconstruction provisions, therefore, will depend upon the standard-specific definition of "affected source."

2.3.2 General Requirements

Comment: One commenter argued that there is no legal basis for developing preconstruction review requirements under section 112(i) that are separate from the requirements of section 112(g). The commenter argued that section 112(i) alone only applies before the effective date of a title V permit program, and it therefore does not warrant a preconstruction review procedure.

Response: Section 112(i) provides the general compliance requirements for sources covered by section 112. Section 112(i)(1) requires that, after the effective date of any emission standard, limitation, or regulation under sections 112(d), (f), or (h), no one may construct a new major source or reconstruct an existing major source, unless the Administrator determines that the source will comply with the standard. This language clearly provides ample legal authority for the preconstruction review requirements provided in § 63.5. As the commenter acknowledges, before the effective date of a title V permit program in any State, the section 112(i) requirements alone apply to sources, and without the requirements laid out in § 63.5, there would be no applicable preconstruction process for major sources subject to MACT standards. As final MACT standards have already been promulgated, but no title V programs have been approved, there is clearly a need for the provisions of § 63.5.

Furthermore, the regulations implementing section 112(g) have not yet been promulgated. When they are published, they will be drafted to avoid duplicative requirements for sources.

In addition, section 112(i)(1) requires preconstruction review of sources subject to residual risk standards promulgated under section 112(f). Section 112(f) is independent of section 112(g), and thus any preconstruction review provisions associated with section 112(g) would not be adequate to implement preconstruction review for sources subject to section 112(f) standards. Therefore, the

provisions of § 63.5 are necessary to ensure compliance with section 112(f).

Comment: Several comments were received regarding the interaction of portions of § 63.5 and the forthcoming rule to implement section 112(g) of the Act. One commenter believed that the definition of construction should defer to the section 112(g) rule. Another felt that the EPA should delete § 63.5(b)(6) until the interaction with the section 112(g) rule is better understood. Another commenter specifically asked what § 63.5(b)(6) was intended to implement if not the modification provisions of section 112(g).

Response: The provisions in § 63.5 of the General Provisions that deal with construction and reconstruction are intended to address the preconstruction review requirements of section 112(i)(1) of the Act as well as additional notification requirements deemed necessary by the Administrator to keep track of new and reconstructed sources. Section 112(i)(1) addresses the construction and reconstruction of major sources after relevant emission standards are promulgated. The provisions of section 112(g) address construction, reconstruction, and modification activities at major sources after title V permit programs become effective and primarily before relevant emission standards are promulgated. Because activities under section 112(i)(1) may be required before title V permit programs become effective, a separate definition of construction is needed in the General Provisions to implement section 112(i)(1).

Section 63.5(b)(6) is intended to clarify that changes made to an affected source that is subject to a promulgated emission standard are also subject to the emission standard, provided that the changes affect the portions of the source that are regulated by that standard. The changes referred to need not be considered a modification under section 112(g). For example, if equipment is added to an existing affected

source, but no increase in actual emissions occurs as a result and the expenditure on the equipment does not trigger a reconstruction determination under section 112(g) or § 63.5 of the General Provisions, the added equipment would be subject to the same emission control (and other) requirements that the existing source was subject to before the equipment was added (e.g., MACT for existing sources). The last sentence in § 63.5(b)(6) as proposed was deleted to reduce confusion in the final General Provisions.

Comment: Several commenters noted that only major sources should be required to submit preconstruction applications. They noted that section 112(i) of the Clean Air Act, which § 63.5 is intended to implement, only requires preconstruction review for major sources. Consequently, these commenters felt that § 63.5(d)(1)(ii)(I) should be deleted. One commenter felt that applications should be received from area sources only when the part 63 standard covers area sources.

Response: The Agency agrees with the commenters, and the final General Provisions reflect the requirement in section 112(i)(1) of the Act that only major sources submit a preconstruction application. Area sources are not required to submit preconstruction applications, even when a part 63 standard covers area sources, so § 63.5(d)(1)(ii)(I) of the final rule has been deleted.

Comment: One commenter requested that the EPA clarify that a separate control device and control efficiency are not necessarily required for each HAP where a source emits multiple HAP. The commenter was concerned about language in §§ 63.5(d)(2) and (3) which requires a description of "each control device for each hazardous air pollutant..." and believed that this language might be misinterpreted to require a separate control device for each HAP.

Response: This consideration can only be addressed within each subpart. Some regulations will have multiple

standards affecting different types of pollutants and units which would, by their nature, require separate control systems. Other regulations may include standards for multiple HAP within a family that may be controlled together through a single control system to meet a combined limit. The control standards within each subpart will make the requirements clear.

Comment: One commenter believes that the discussion of preconstruction review should not reference the defined term "relevant standard." Instead, it should refer only to the standards promulgated under sections 112(d), (f), or (h) of the Act.

Response: The preconstruction requirements apply to standards developed pursuant to sections 112(d), (f), or (h) of the Act. The rule language in § 63.5(d)(1)(i) makes this clear by referring to relevant emission standards that have been promulgated in part 63.

Comment: One commenter noted that § 63.5(b)(5) appears to leave out sources that receive extensions or exemptions from compliance.

Response: Section 63.5(b)(5) has been revised to address those sources that have received a compliance extension or an exemption from compliance.

Comment: One commenter felt that § 63.5(b)(4) should be deleted because it establishes overly broad preconstruction notice requirements, and it does not establish a size threshold for the sources it refers to.

Response: The EPA believes that the broad preconstruction notice requirements contained in § 63.5(b)(4) are appropriate; however, that paragraph has been revised to clarify that only new and reconstructed affected sources are subject to the notification requirement. The term "affected source" effectively establishes a size threshold for the source it refers to. Affected source will be defined in individual emission standards.

Comment: Section 63.5(b) should be eliminated as it is redundant with § 63.1(e).

Response: The Agency does not believe that the provisions contained in §§ 63.1(e) and 63.5(b) are redundant. Section 63.1(e) addresses the applicability of approved State permit programs before a relevant standard has been set under part 63, and § 63.5(b) contains compliance requirements for existing, newly constructed, and reconstructed sources.

2.3.3 Application

Comment: Sections 63.5(d)(3) and (d)(4) should be simplified, to be consistent with the requirements for applications under part 61.

Response: Sections 63.5(d)(3) and (d)(4) require more information to be submitted in a reconstruction application than is required under similar provisions in part 61. The Agency believes that all the information required to be submitted under these sections is necessary to allow a complete and prompt evaluation of a reconstruction application under part 63.

Comment: One commenter suggested that requirements contained in § 63.5(d)(3)(iii) through (v) be deleted from the reconstruction application if the source designates itself as reconstructed.

Response: The EPA agrees that the information required under § 63.5(d)(3)(iii) through (v) would not be necessary for sources that designate themselves as reconstructed and therefore subject to new source standards. The final rule has been revised to reflect this change by adding subparagraph (vi) to § 63.5(d)(3). This paragraph allows the owner or operator to designate the affected source as a reconstructed source and to declare that there are no inhibitions to complying with the standards. In this case, the owner or operator would be exempt from submitting the information listed in § 63.5(d)(3)(iii) through (v).

Comment: One commenter indicated that

§ 63.5(d)(1)(ii)(H) should be revised to require only a discussion of percent reduction where a promulgated standard speaks only in terms of percent reduction, and not emission rates.

Response: The EPA agrees with the commenter and has modified this section to require a source to submit percent reduction information if a promulgated emission standard is in terms of percent reduction. However, operating parameters, such as flow rate, must be included in the application to the extent that they demonstrate performance and compliance.

Comment: Section 63.5(d)(2) should require submittal of data only on HAP that are regulated by the standard.

Response: National emission standards for hazardous air pollutants under section 112 of the amended Act will be established on a source-specific, and not on a pollutant-specific, basis. The Agency expects standards to cover the emissions, or potential emissions, of all HAP listed in section 112. Therefore, a construction or reconstruction application must include information on all HAP.

Comment: Section 63.5 should state explicitly that engineering drawings and detailed specifications are not to be submitted.

Response: In many situations, engineering drawings and other detailed specifications will be necessary in order for the Agency to make an informed review of a construction application. In cases where such information is submitted and the owner or operator believes that the information is confidential, the Agency will evaluate this information in accordance with the regulations governing confidential business information and treat it in the appropriate manner.

Comment: Submittal of an application under § 63.5(d)(1)(i) and §§ 63.5(d)(2) and (3) should only be required if actual field construction or reconstruction is about to be initiated.

Response: The preconstruction or reconstruction

application required under §§ 63.5(d)(1), (2), and (3) is required to be submitted "as soon as practicable" before actual field construction or reconstruction is to be initiated. The construction application is required to be submitted in advance so that the Administrator may have sufficient time to make a determination without delaying the source's plans. This section of the rule has been revised to allow owners and operators greater discretion regarding when to submit applications. However, the EPA advises owners and operators that waiting until construction is about to commence would not provide the Administrator with sufficient review time, and it could delay commencement of a project.

Comment: Reporting control efficiencies for individual compounds under the construction application requirements of § 63.5(d)(1)(J) may not be possible for all sources. In this case, only the overall control efficiency should be reported.

Response: The provision for reporting control efficiencies for individual compounds is found in § 63.5(d)(2), not § 63.5(d)(1)(J). The EPA recognizes that instances may exist where precise estimates of the control efficiencies of specific HAP compounds will not be possible. In these instances, the owner or operator should provide an approximation of control efficiency for each individual HAP and then submit the actual control efficiencies in accordance with § 63.5(d)(1)(iii). The final General Provisions has been revised to reflect this change.

Comment: Section 63.5(d)(1)(iii) should be revised to allow engineering estimates of emissions in applications for approval of construction or reconstruction.

Response: Section 63.5(d)(1)(i)(H) allows the use of estimates in the preconstruction application instead of actual emissions data. Therefore, a preconstruction application can be approved using this information. However, § 63.5(d)(1)(iii) requires actual, measured emissions data to be submitted no later than with the initial notification of

compliance status.

Comment: One commenter stated that § 63.5(d)(1)(iii) should be revised to allow the owner or operator to estimate emissions from small emission points, rather than running tests.

Response: Emission information should be based on testing whenever possible. However, in some instances the Agency realizes that testing is either impossible, impractical, or unnecessarily burdensome. In these situations, the reviewing authority can work with the owner or operator on a source-specific basis. However, the EPA does not believe it is appropriate to modify § 63.5(d)(1)(iii) to allow estimated emissions instead of measured emissions for small emission points in all cases.

Comment: One commenter indicated that the applicant should be given the opportunity to withdraw an application at any time prior to denial.

Response: An application for construction or reconstruction may be withdrawn at anytime with notice to the appropriate enforcement authority. A source need not wait for a decision, and the EPA would appreciate efforts to discontinue unnecessary reviews.

Comment: Commenters said that the § 63.5(d)(1) requirement that an application for approval of construction or reconstruction be postmarked 180 days before the construction or reconstruction is planned to commence once the relevant standards are in place should be shortened. The unnecessarily long lead time will encourage incomplete applications and reduce the flexibility of sources to respond to market conditions or other regulatory mandates. The EPA should make it clear that construction may commence immediately upon approval. In contrast, a State agency noted that if clarifying information is needed by the permitting agency, the advance notification and review period could easily stretch into a year. In fact, one commenter suggested

that applications should be postmarked 360 days prior to construction once the relevant standards are in place. Some commenters felt that the EPA should cut its review periods in half; others said that additional review time was needed.

One commenter said that the 45-day clock that starts with the effective date of individual standards is unworkable; it will probably take a minimum of 30 to 45 days for a source to determine its applicability under a given standard.

In addition, the EPA should allow the owner or operator to begin any form of construction activity before final approval is received, at the risk of the owner or operator in the event of disapproval, unless the State where the source is located imposes restrictions on the scope of construction activities. In this case, construction should be allowed to begin as soon as other permit programs (e.g., existing State preconstruction programs) are satisfied.

Other commenters said that a blanket requirement for a 180-day notice is inappropriate for smaller HAP sources, area sources, or for sources such as industrial cooling towers that have technology-based requirements. In these cases, a simple notice and certification that identifies the source and provides sufficient information to indicate that the source will meet the preconstruction review requirements of the standard should suffice. This notice and certification should be submitted shortly before construction with expedited agency review.

A related comment is that the EPA should delete the 30-day deadlines to submit additional information for §§ 63.5(e)(2)(ii) and (e)(3)(ii) because sources will already be very motivated to respond promptly. In the event that more time is available, possible sanctions are not identified, nor do they seem appropriate.

Response: As discussed in an earlier comment response and in section IV.E.4 of the promulgation preamble, the final rule has been revised to require the submittal of an

application for approval of construction or reconstruction "as soon as practicable" before construction or reconstruction is planned to commence.

In general, it is the EPA's policy that construction may begin immediately upon approval of an application. However, because of the need to make case-by-case decisions on the approval of construction or reconstruction, the Agency does not believe it is appropriate to state this in the final rule.

The 45-day clock referred to by the commenter is that period allowed under proposed § 63.5(d)(1)(i) for the submittal of an application for approval of construction, when construction had commenced, but startup had not occurred before the effective date of the standard. The EPA believes that, in such a situation, it is important to receive the application for approval as soon as possible after promulgation of the standard in order to ensure that the source's plans for construction are adequate to allow it to meet the standard at startup. To avoid delays in startup, it benefits the new source owner or operator to know as soon as possible if changes to a project are necessary prior to startup. Further, the proposed standard will have provided an owner or operator with advance information that can be used to begin preparation of an application prior to promulgation of the final standard. In light of these considerations, the Agency believes that while some extension of the 45-day period proposed may be appropriate, it should not be substantial. Therefore, the final rule requires that for a source whose construction commences after proposal of a standard and whose startup will occur after promulgation, the application for approval of construction or reconstruction shall be submitted as soon as possible, but no later than 60 days following promulgation of the relevant standard.

The Agency disagrees with the commenter's suggestion that any form of construction activity be allowed prior to approval at the risk of the owner or operator. This is disallowed by

policy because it is too difficult to disapprove a construction application once an owner or operator has made a significant investment in the project.

As discussed above, the requirements for the application for approval of construction or reconstruction established in the General Provisions are the generic requirements for all sources. The complexity of applications may be tailored to a particular source category in a MACT standard, allowing application requirements to be streamlined.

The EPA disagrees with the commenter's suggestion that the 30-day deadlines for submitting additional information be deleted. The Agency needs a reasonable deadline for the submittal of comments or additional information in order to proceed with a determination as expeditiously as possible.

2.3.4 Approval of Construction or Reconstruction

Comment: Several commenters felt that a source should be shielded from enforcement action by the EPA once approval has been granted for construction or reconstruction, and thus § 63.5(e)(5)(ii) should be deleted or revised.

Response: The EPA rejected these suggestions because the shield is inappropriate when there may be violations of requirements other than the application. Where the source is acting in accordance with an approved application, enforcement action would probably not be taken for the requirements in that application, but there may be other requirements a source faces, which should remain in effect and enforceable. Thus, the EPA has not modified the referenced section.

Comment: Several commenters believed that a construction or reconstruction review application should be deemed approved if no action is taken by the EPA within 30 days.

Response: Under section 112(i)(1), the EPA has the statutory obligation to ensure that new and reconstructed major affected sources will meet the relevant promulgated emission standard if they are properly built and operated. Therefore, it is inappropriate for the Agency to waive the

requirement that construction or reconstruction applications be approved in advance of startup of the affected source. The EPA intends to act on preconstruction applications in a timely manner to prevent delays in sources' planned construction activities; however, it would be unreasonable for the Agency to guarantee that such a delay will never take place. It is impossible for the Agency to know in advance the circumstances surrounding a particular construction or reconstruction project.

Comment: Several commenters indicated that owners or operators should be allowed to undertake a wide range of on-site activities, at their own risk, before receiving approval for a reconstruction or construction application from the EPA. One commenter pointed out that while the preamble to the proposed regulation indicated that activities of a "permanent nature" were prohibited, there was no such prohibition in the regulation. However, another commenter felt that no on-site activity should be allowed before approval by the Agency.

Response: As noted by the commenter, the proposed preamble (58 FR 42785) listed some activities that may and may not be commenced while a source is awaiting approval to construct. A source is to refrain from undertaking any activities of a permanent nature in the event that an application is withdrawn or not approved. The EPA sees no reason to prohibit a source from beginning planning and design activities at its own risk. The EPA believes sufficient guidance on the meaning of the prohibition was provided in the preamble of the proposed General Provisions, as noted above. Because of the need to make construction determinations on a case-by-case basis, the EPA believes it is not appropriate to include this prohibition directly in the rule.

Comment: The requirement in § 63.5(b) for the EPA to issue written approval in the form of a construction permit exceeds the Clean Air Act mandates. The EPA is only required to make a determination before construction begins that the

source will meet new source standards, and a preconstruction permit is not required.

Response: Section 63.5(b) does not require a source to obtain a construction permit. This section requires a source to submit information regarding the planned construction or reconstruction in accordance with § 63.5(d) and that the Administrator approve the construction or reconstruction in accordance with § 63.5(e). Section 63.5(e) states that the Administrator will notify the owner or operator in writing of approval or intention to deny approval, with no mention of a permit.

Comment: One commenter felt that § 63.5(e)(2) must state that the only basis for denial of approval is when the source will not meet MACT or when the source did not submit information in a timely manner.

Response: The Agency disagrees with the commenter. Denial of an application may be based upon various factors. The Administrator is not limited to denial based solely upon untimely submittal of information, or upon whether the finished project will meet an applicable MACT standard. Construction of a new source within a nonattainment area is just one example of relevant information beyond timing and compliance with the MACT standard that the Administrator will consider.

2.4 COMPLIANCE AND MAINTENANCE ACTIVITIES

2.4.1 Applicability

Comment: The commenter stated that the General Provisions are confusing, and that it is difficult for an owner or operator to determine the various requirements and timing thereof to which a source is subject. In order to make the General Provisions more understandable, the commenter suggests drawing sample timelines that graphically represent the various due dates for the different kinds of sources.

Response: The EPA appreciates the commenter's concern, and has made every effort to make the final General Provisions

clear and easy to understand. In addition, the EPA has developed timeline tables that depict the various timing requirements for different kinds of sources and activities. These tables are included as Appendix A of this document. Additional graphical timelines may be developed as part of enabling materials for the final General Provisions.

2.4.2 Compliance Dates

Comment: The commenter believes that § 63.6 is incorrectly worded to imply that all new sources, the construction of which commences after the date of the proposed standard, must comply with the standard upon promulgation. The commenter contends that this is true only for new major sources.

Response: Sections 63.6(b)(1) and (b)(2) clearly state that new and reconstructed sources that are subject to a relevant standard must comply with the standard by the standard's promulgation date or by the startup date of the source, whichever is later. This requirement applies to all subject new sources whether they are affected major sources or affected area sources. Section 112 of the Act makes no distinction between major and area sources with regard to compliance dates.

Comment: One commenter said that the EPA should address the issue of a compliance date for area sources that increase their emissions such that they become major sources and therefore subject to a relevant standard. The commenter said that this was a particular concern in situations where the area source has not obtained a construction permit.

Response: The commenter is correct that the proposed General Provisions did not address area sources that subsequently become major sources. Sections 63.6(b)(7) and (c)(5) have been added to the final rule to address this situation. Consistent with the definitions of "new source" and "existing source" in § 63.2, the new provisions in §§ 63.6(b)(7) and (c)(5) distinguish between previously

unaffected "new area sources" and "existing area sources" based on when construction or reconstruction of the area source was commenced. The EPA believes that this is an appropriate way to distinguish between new and existing area sources for the purposes of establishing compliance dates for sources that subsequently become affected major sources, despite the fact that these sources were unaffected at the time construction or reconstruction was commenced.

Comment: One commenter believes that § 63.6(b)(1) should be amended to say: "except as provided in paragraphs (b)(3) and (b)(4) of this section..." because paragraphs (b)(3) and (b)(4) constitute exceptions to the provisions of (b)(1), and without this clarifying phrase, the relationship between the paragraphs may not be clear. Another commenter said that the reference to § 63.5(b)(3) in paragraph 63.6(b)(3) is incorrect, and should be changed to § 63.6(b)(1).

One commenter believes that § 63.6(b)(3) should be amended to refer to section 112(f) standards as well as section 112(d) and section 112(h) standards. The commenter argues that this is demanded by the Act, and that the 3-year extensions of compliance discussed in this paragraph should apply to all standards under sections 112(d), 112(f) or 112(h).

Response: The EPA agrees that § 63.6(b) should be clarified regarding the relationship between paragraphs and has revised the section accordingly. The reference to § 63.5(b)(3) was not in error [see section 112(i)(2) of the Act]; however, the EPA has determined that this reference is not needed and, therefore, it has been deleted from the final rule.

Comment: The commenter suggests that the EPA should revise § 63.6(b)(3)(i) to allow extensions of compliance for sources constructed between proposal and promulgation of a standard that are required to install controls "different" from the proposal, as well as for controls more stringent than

the proposal.

Response: The EPA disagrees with the commenter's suggestion; however, this provision in the final rule has been changed in response to this comment to clarify that the promulgated standard may be more stringent than the proposed standard in a variety of ways and not just in terms of the level of control required. The language in the final rule more clearly reflects the statutory language in section 112(i)(2) than did the proposed language. Section 63.6(b)(3)(i) allows extensions of compliance for sources constructed between proposal and promulgation of a standard that are required to install "more stringent" controls pursuant to section 112(i)(2) of the Act. There is no statutory requirement for the Agency to allow this extension of compliance when the required controls are "different" from proposal.

Comment: The EPA received several comments on the provisions of § 63.6(b)(4), which implement the compliance date provisions for standards developed under section 112(f) of the Act. One commenter stated that the 10-year period allowed for a source constructed between proposal and promulgation of a section 112(f) standard, if the promulgated standard is more stringent than the proposed standard, is excessive. Another commenter expressed concern that this 10-year period for compliance with risk-based standards may be unacceptable from the perspective of public health impacts.

Response: The first commenter has misunderstood the provisions of § 63.6(b)(4), which give sources constructed between proposal of a section 112(d) standard and proposal of a section 112(f) standard up to 10 years after the date construction has commenced to comply with the section 112(f) standard. These provisions are mandated by section 112(i)(7) of the Act and, therefore, the EPA must provide for the 10-year period in the General Provisions. In addition, the EPA has provided in § 63.6(b)(4) that sources subject to a

section 112(f) standard need not comply with that standard before the standard's effective date.

Comment: Two commenters stated that § 63.6(b)(4) should be revised to accurately reflect the statute. These commenters suggested revising the wording to mimic the wording of the statute exactly, so that it reads "shall not be required to comply with the emission standard...until the date 10 years after..."

Response: The EPA maintains that the wording of § 63.6(b)(4) correctly implements the intention of the statute, and there is no need for revisions. The regulatory language merely states what is implicit in the statute; while sources constructing between section 112(d) rule proposal and section 112(f) proposal have 10 years from construction to comply with the section 112(f) rule, when more than 10 years from construction has passed, the normal compliance rules apply. This does not shorten the 10-year compliance period for those sources.

Comment: One commenter stated that § 63.6(b)(4) should be revised to indicate that if a section 112(f) standard is promulgated more than 10 years after a new source begins construction, the source shall be given the same amount of time to come into compliance as other existing sources.

Response: As discussed in response to the previous comment, the General Provisions do provide for the case when a section 112(f) standard is promulgated more than 10 years after a new source begins construction. Section 63.6(b)(4) of the final rule provides that:

. . . if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1) and (b)(2) of this section.

Clearly, all sources to which § 63.6(b)(4) will apply will be new sources because they commenced construction "after the Administrator first proposed regulations under [section 112]

establishing an emission standard applicable to such source" [see section 112(a)(4)] and, by definition, construction was commenced after the proposal of a standard under section 112(d) that was applicable to them.

Section 63.6(b)(4) does not apply to existing sources, and it has been revised in the final rule to remove the inadvertent reference to the compliance date for existing sources in § 63.6(c)(2).

Comment: The commenter states that the General Provisions fail to address the issue of stringency when a final rule has more stringent monitoring requirements than a proposal, or when the applicability thresholds have been lowered. The commenter recommends that in the first case, the source should receive the statutory extension, and in the second case, that sources previously uncovered should be regulated as existing sources.

Response: As individual standards are promulgated, the EPA will determine whether the final standard is more stringent than the proposed standard and discuss the basis of the stringency determination. Because the effects of possible changes in monitoring requirements and applicability thresholds vary among source categories, it is not appropriate to make a blanket assumption in the General Provisions that such changes are necessarily more stringent and that compliance extensions are an appropriate remedy. Both the statute and the General Provisions are clear in the definitions and related applicability requirements concerning the differences between new and existing sources, and no changes beyond those discussed elsewhere in this document have been made.

Comment: The commenter suggests that the provision for a 3-year extension when a final rule is more stringent than the proposed rule should clarify that the proposed standard that is referenced is the standard of concern when there is more than one standard covering a source.

Response: The EPA believes that § 63.6(b)(3) as proposed is sufficiently clear with regard to the commenter's concern.

Comment: The commenter suggests that the EPA refer to timing requirements established pursuant to sections 112(g), (j), and (q) of the Act in both §§ 63.6(b) and (c). The commenter has suggested adding a new subparagraph to each of these sections to accomplish this.

Response: The timing requirements related to sections 112(g) and (j) of the Act will be dealt with in separate rulemakings and are not appropriately established as part of the General Provisions. Compliance deadlines and other requirements resulting from revisions to section 112 standards promulgated prior to the Clean Air Act of Amendments of 1990 will be addressed in individual rulemakings conducted under the authority of section 112(q).

Comment: The commenter argues that compliance timelines for MACT source category promulgations should be specified within each MACT standard, rather than in the General Provisions.

Response: The EPA discussed the relationship between the General Provisions and individual NESHAP, or MACT standards, in the promulgation preamble in detail. The EPA's policy is that the General Provisions should provide the general compliance framework for individual standards, including the baseline requirements for compliance dates that are included in section 112. In many situations individual standards may override specific provisions of the General Provisions, when appropriate, as provided for in the General Provisions. The compliance date for existing sources is one of the provisions that will be determined in each standard, not to exceed 3 years, as specified in the Act. Compliance dates for new sources are specified directly in the Act, and they will not be determined in individual standards.

Comment: Commenters said that timing constraints related to the need to conduct performance testing, design pollution

control systems, and conduct possible multi-source dispersion modeling to determine compliance status mean that the EPA should never establish a compliance date for a section 112(d) or (h) standard that is less than 3 years after the effective date. With a 3-year period to gear up for compliance, requests for extensions under § 63.6(i)(4) should be allowed up to two years after the effective date for these standards. It is in the source's interest to submit the request as soon as possible and no further deadlines are needed.

Response: The Act is clear that the Administrator shall establish compliance dates for existing sources that provide for compliance as expeditiously as possible and that 3 years is the maximum amount of time allowed for compliance. There are instances when a compliance period of less than 3 years is appropriate. For example, in the proposed chromium electroplating NESHAP, a 3-month compliance period is allowed for affected sources to install some controls owing to the widespread availability of these particular controls, the extensive industry experience with the controls, and the environmental benefits of the emission reductions. The proposed General Provisions appropriately referred to the applicable subpart for the compliance date for that subpart, and also reflected the maximum period of 3 years allowed by the Act. For this reason, the regulatory language regarding compliance deadlines in the General Provisions has been maintained as proposed.

The EPA proposed that a request for an extension of compliance be submitted not later than 12 months before an affected source's compliance date for a source not utilizing emissions averaging to demonstrate compliance, and not later than 18 months before the compliance date for a source that is utilizing emissions averaging. The EPA believes these time periods are appropriate to allow for Agency review of the request and action by the source, if necessary, to respond to the Agency's determination on the request. Given that a

compliance deadline of less than 3 years may be established in some standards, it is appropriate to relate the deadline for requests for extensions of compliance to the compliance date that is established in the applicable standard, rather than providing a blanket period of 2 years after the effective date as requested by the commenter. Therefore, no change was made in the proposed requirements regarding the deadline for requests for extensions of compliance.

Comment: The commenter stated that the EPA should assume compliance will be achieved within 90 days of the effective date of a standard. This commenter said that longer periods would be appropriately determined in individual rulemakings. This commenter stated that a 3-year compliance period should not be the norm, and the burden to demonstrate the need for an extended compliance period should be on the source.

Response: The EPA intends to establish the shortest practicable compliance periods for existing sources during the rulemaking process for each standard. This position is reflected in § 63.6(c)(1) of the General Provisions, which states that:

the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part. Except as otherwise provided for in section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

The EPA believes that a default assumption that compliance dates should be set at 90 days after the effective date of the standard is not reasonable and is not consistent with the intent of section 112(i)(3), which provides that the Administrator shall establish compliance dates for each category of sources providing for compliance "as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard. . ." The burden of demonstrating the need for an extended compliance period will

be on the affected category of sources during the rulemaking process to develop a standard for that category.

Comment: The commenter claims that the compliance dates in § 63.6(c) are inconsistent with the provisions of the Act, which allow existing source up to 3 years after promulgation to comply with a standard, as well as a further 1-year extension, if necessary.

Response: Section 112(i)(3) provides that the Administrator determine the compliance date for existing sources on a standard-specific basis. The statute provides that the resulting compliance dates may be as long as, but may not exceed, 3 years after the standard's effective date. Thus, compliance periods for existing sources may be less than 3 years. The compliance date referred to by the commenter is provided for in § 63.6(c)(1), and the one year extension of compliance is provided for in § 63.6(i)(4)(i)(A).

Comment: The commenter states that § 63.6(c)(1) as proposed incorrectly states that "In no case will the compliance date established for an existing source...exceed 3 years after the effective date...." The commenter suggests that this paragraph be revised to reflect the fact that an owner or operator may receive an extension of compliance pursuant to section 112 of the Act.

Response: The EPA recognizes the commenter's concern. The exceptions to the compliance date requirements in § 63.6(c)(1) are addressed in § 63.6(a)(1).

Comment: The commenter suggests that § 63.6(c)(1) should be deleted to avoid confusion, as this paragraph implements section 112(i)(8) of the Act, which is also implemented by the coke ovens regulation, subpart L of part 63.

Response: The EPA agrees with the commenter that the reference to coke oven batteries in § 63.6(c)(1) is unnecessary, and the Agency has revised the rule to remove the reference to coke oven batteries in this paragraph, rather than deleting the paragraph entirely.

Comment: One commenter stated that the General Provisions should provide a simple mechanism for States to alter time frames for notification, reporting and records retention, to ensure that all sources comply, as the existing timeframes in the proposed General Provisions may not be practical.

Response: The General Provisions allow owners and operators to change the dates and frequencies of certain requirements by mutual agreement with the delegated authority. Other timelines, such as the records retention period, are to remain uniform for all affected sources subject to a regulation. (The EPA believes that the required records retention period is the minimum necessary to provide evidence of a violation that may have occurred and to allow the EPA to take enforcement action against the source within the statute of limitations.) The EPA has set the deadlines at what the Agency believes are reasonable times, including the changes made since proposal in response to comments. However, States have the flexibility to submit programs to the EPA for approval under section 112(1) of the Act (see subpart E of part 63) that alter many of the time frames in the General Provisions. The EPA believes, therefore, that the mechanism requested by the commenter has already been provided.

2.4.3 Compliance Extensions

Comment: Many commenters disagreed with the EPA's proposed policy on compliance extensions. Specifically, many commenters argued that sources should not be required to submit requests for compliance extensions no later than 12 months before the compliance date. Commenters felt that this time period would make it difficult for owners or operators to respond flexibly to rapidly changing conditions, and that it would reduce the owners' or operators' ability to accurately assess their ability to comply by the compliance date. Commenters suggested that the deadline for filing compliance extension requests should be closer to the compliance date,

and several commenters suggested that sources should be allowed to file a request for a compliance extension up until the compliance date. Other commenters suggested that 30 days before the compliance date is appropriate if emissions averaging is not used, and 60 days is appropriate if it is used.

Response: Because of the requirements set out in section 112(i) of the Act, many emission standards will have a compliance date for existing sources that is three years after promulgation. The Agency believes that this should provide ample time for sources to determine whether they can meet their compliance date. New sources have the period of time prior to startup to prepare for the requirements of an applicable standard, and the EPA believes that the deadline for compliance extension requests is therefore reasonable and no changes have been made in the final rule. The advance request allows sufficient time for the implementing authority to make a determination before the compliance date while still allowing the source adequate time to come into compliance if an extension request is denied.

The Agency believes that situations where unavoidable or unforeseen circumstances arise after the deadline for requesting a compliance extension, thereby interfering with the source's ability to comply with the standard by the compliance date, will be rare. Consequently, the EPA has determined that it is inappropriate to include a special consideration provision in the General Provisions to review late requests for extensions of compliance on a case-by-case basis. Instead, when these situations arise, the EPA will avail itself of enforcement options under section 113(a) of the Act, and an administrative order will be employed to handle late requests for compliance extensions. In this process, an enforceable schedule for compliance will be negotiated between the EPA (or the delegated State) and the owner or operator. Failure to meet this schedule could result

in a violation of the administrative order. The EPA maintains that this approach to addressing late requests for compliance extensions will expedite compliance with standards, even for those sources that encounter delays after the deadline for submitting compliance extensions. Further, because the compliance schedule will be negotiated with the source, it should be amenable to the particular circumstances or concerns faced by any individual source.

Comment: Two commenters requested clarification regarding which systems may receive compliance extensions, and one of these commenters specifically stated that pollution prevention practices may also be relevant measures warranting extensions. This commenter suggested language changes to §§ 63.6(i)(4) and (i)(5) to specify examples of installations of controls that the commenter believes should qualify for extensions of compliance.

Response: Compliance extensions may be requested for any systems required for control of HAP under a relevant standard. However, pollution prevention projects may be considered in an extension request only insofar as the project directly affects "installation" of controls used to comply with a given standard. The language changes suggested by the commenter have not been incorporated into the General Provisions because the EPA reserves the discretion to determine which installations may qualify for extensions of compliance on a case-by-case basis or during the development of individual NESHAP.

Comment: The commenter states that the General Provisions fail to address how the EPA will implement the 2-year extension period authorized by section 112(f)(4)(B) of the Act.

Response: The provisions for implementing the 2-year extension of compliance under section 112(f)(4) of the Act are specified in § 63.6(i)(4)(ii) of the final General Provisions.

Comment: One commenter noted that § 63.6(i)(15), which

addressed requests for section 112(d) compliance extensions, does not address requests submitted before approval of a State's part 70 operating permit program or of the part 71 Federal program. The commenter suggested that the following sentence be added to the end of that paragraph to correct this oversight: "Before the date that a part 70 or part 71 permit program is approved in the source's State, the notification of approval of a request for an extension of compliance in paragraph (i)(12)(i) of this section shall serve as the approval of the extension until a permit is issued under part 70 or part 71."

Response: The contents of this paragraph have been moved from § 63.6(i)(15) to § 63.6(i)(4)(i)(A) in the final rule, but the changes suggested by the commenter have not been made. The commenter is correct in pointing out that, in some cases, a source may need to seek an extension before approval of a State's part 70 operating permit program or a part 71 Federal program. However, the regulatory language accounts for this. There will be situations where approval or denial of the request will precede approval of a permit program. In such cases, the approval notice will determine the source's compliance responsibilities until a permit is issued.

Comment: The commenter believes that a transition plan is necessary to establish a mechanism for implementing federally promulgated regulations before approval of a title V program and delegation of NESHAP, particularly with regard to submission and approval of compliance extensions under § 63.6(i). The commenter believes that at a minimum, Regional Offices should be in consultation with State and local agencies on these issues.

Response: The EPA agrees that before the title V permit program is approved and operational, all provisions of regulations, including compliance extensions, should be implementable and enforceable. Indeed, the EPA believes that any part 63 standard is directly enforceable even in the

absence of a title V permit. Section 113(b) of the Act provides that permits, implementation plans, orders, and other requirements under the Act, including the compliance extension approvals under § 63.6(i), are fully enforceable. Therefore, no change to the language of this rule has been made. Before States are delegated the authority to implement part 63 NESHAP through approval of their title V permit programs, States may accept delegation of NESHAP through the administrative procedures established under section 112(l) of the Act in subpart E of part 63. The EPA's Regional Offices will be in consultation with State and local agencies on these issues.

Comment: Several commenters requested that subpart A be changed such that monitoring performance tests (performance evaluations) and performance tests are waived automatically if a source is granted a compliance extension.

Response: The EPA disagrees with the commenter that performance evaluations and performance tests should be waived automatically. As discussed in section 2.5.8, performance test waiver, the Administrator views the application for a waiver of performance tests (and performance evaluation tests) to be necessary to justify the request. The submission of these applications is not burdensome, and they should be submitted with the request for an extension of compliance or at the same time that a site-specific test plan or notification of performance test would be submitted. Insofar as a source is able to comply with testing and monitoring requirements despite the need for a compliance extension, the tests should be conducted, and the extension should not provide any undue delays to these requirements. However, the EPA recognizes that there may be situations where it would be appropriate to grant a compliance extension that covered performance tests, and § 63.6(i)(10)(iv) has been added to the rule to allow for these situations.

Comment: Many commenters suggested that the allotted time frames for various activities related to submission and

approval of compliance extensions were too short. One commenter specifically mentioned the periods given for responding to a request for additional information and for responding to a notice of intention to deny approval. Another commenter stated that the periods allotted to notify sources of the status of their application, and of approval or intent to deny approval, were too short. A third commenter suggested many changes to the schedule for requests for compliance extensions. In general, this commenter requested that most time periods be at least doubled, and some increased even further, as the commenter believes that the proposed time periods are too short. One commenter is particularly concerned with the period allotted for a source to present information or arguments to appeal a denial of a request for a compliance extension. This commenter believes a period agreed to by the owner or operator and the permitting authority is appropriate, and that it should be at least 60 days long. The commenter believes that the source should be shielded from enforcement action during this period.

Response: Many of the commenters' suggestions have, in fact, been incorporated into the final General Provisions; however, not all of the commenters' suggested changes have been made. See the discussion in section 2.9 of this document for a detailed discussion of related timeline issues and changes made to the General Provisions. In addition, the General Provisions provide considerable flexibility to owners and operators who may pursue mutually agreed upon schedule revisions [§ 63.9(i) and §§ 63.10(a)(5) through (a)(7)].

No enforcement shield will be provided during this time, as the EPA reserves the right at its discretion to bring enforcement actions against sources when appropriate, e.g., when sources have not yet been granted a compliance extension and are required to comply with the relevant emission standard by the date specified in the standard. In general, it is against Agency policy to grant enforcement shields.

Comment: Several commenters commented on the "other information" referred to in § 63.6(i)(9). Some commenters state that such information should be shared with the source and that the phrase should be revised to read "other information provided by the source."

Response: The Administrator may use all information available in a determination, including "other information" provided by sources other than the affected source. Before denying a request for a compliance extension, the Administrator will provide the applicant with a finding of insufficient information or a basis for intended denial with an opportunity for the source to provide additional arguments. All submissions not identified as sensitive or confidential are available for public review.

Comment: The commenter suggests that §§ 63.6(i)(12) and (i)(13) should refer to "request for extension" rather than to an "application for extension."

Response: The EPA disagrees with the commenter and believes that the language in §§ 63.6(i)(12) and (i)(13) is sufficiently clear and precise. Therefore, the final rule has not been revised.

Comment: Several commenters requested that the definitions of compliance plan and compliance schedule be deleted or modified. One commenter suggested that the definition of compliance schedule has no legal basis, and that until a State permit program has been approved, no compliance schedule can be required under section 112. The commenter who requested that the definitions be modified suggested adding the phrase "but no later than the date specified in the subpart" after the words "on a timely basis" in the definitions of both compliance plan and compliance schedule.

Other commenters expressed a general agreement with the definition of compliance schedule. Some commenters voiced objections to the requirement in § 63.6(i)(6)(iii) for a schedule of intermediate steps leading to compliance. These

commenters disagreed with the provisions allowing a compliance extension to be terminated if intermediate steps are not met. One commenter suggests that the requirement for interim steps outlined in § 63.6(i)(6)(iii) should apply only to section 112(f) extensions under § 63.6(i)(5) as proposed.

Response: A compliance schedule is required by the General Provisions as a part of an approved compliance extension. The definition of compliance plan is included for use by individual subparts, if necessary, but it is not directly required by the General Provisions. The EPA has authority under the Act to establish such requirements to implement section 112. Section 113(b) of the Act clearly states that not only permits but, among others, implementation plans, rules, orders, waivers, or other requirements are fully enforceable. This is a broad grant of authority and constitutes an adequate legal basis for the requirement for compliance schedules. Emission limits are only one form of standard; milestones are equally significant and enforceable. These definitions are consistent with the definitions in the part 70 permit regulation and include enforceable milestones. The schedule and milestones may be adjusted at the Administrator's discretion as appropriate to accommodate changes in the ordering and installation of equipment.

The Agency believes that the compliance extension must include milestones that provide the enforcement authority with assurance that progress is being made during the term of the extension. Interim milestones are necessary to ensure that all aspects of the compliance schedule are met. The EPA's experience has shown, from the part 61 NESHAP program, with the granting of waivers with interim requirements, and from the inclusion of enforceable interim milestones in consent decrees lodged with the court, that such an enforceable sequence of events aids enforcement and ensures that environmental goals will be achieved in a timely fashion. If only the final compliance date were enforceable, then the EPA

would have no enforcement tool to use to prevent noncompliance at the end of the compliance schedule. Because timely emissions reductions is an important goal of the EPA, enforceable interim milestones have been retained in the final rule.

The duration of the extension is based upon the installation of control equipment, and if a milestone is not met, the schedule may need to be adjusted. Not meeting a milestone may not automatically lead to an enforcement action. However, such a violation may lead to revocation of the extension. The primary concern of the Agency is to have noncomplying sources on an accurate schedule to achieve compliance. This concern, and the need for enforceable milestones, is equally valid and appropriate for technology-based, as well as health-based, standards.

The definitions of compliance plan and compliance schedule have not been changed to add the phrase "but no later than the date specified in the subpart," as suggested, because the compliance date specified in the subpart would no longer be the appropriate date if the existing source were granted a compliance extension. The EPA believes the words "on a timely basis" in the definitions are adequate to ensure compliance by the relevant date for the requirement(s) of concern.

Regarding the comments related to intermediate steps, the EPA has not made any changes in the final rule. The Administrator always has the authority not to terminate, or to modify a compliance extension, where intermediate steps are not being met; however, where the Administrator believes that the intermediate violations are such that the compliance extension should be terminated and enforcement actions should ensue, he or she should have that flexibility.

Comment: Two commenters stated that the General Provisions should include provisions for a 5-year extension of compliance for installation of BACT or technology to attain LAER pursuant to section 112(i)(6) of the Act.

Response: The EPA agrees with the commenter, and the rule has been revised accordingly. Provisions implementing extensions of compliance for installation of BACT or technology to meet LAER are included in § 63.6(i)(5).

Comment: Two commenters requested that an application for an extension of compliance be deemed approved if no action is taken within 30 days of submission of the application.

Response: Regarding requests for compliance extensions, the Agency will notify the owner or operator in writing of approval or denial of approval within 30 calendar days of receiving sufficient information to evaluate a request. The 30-day period will begin after the owner or operator has been notified that his or her application is complete. While the EPA does intend to meet the notification times discussed here, sources cannot assume an application is approved if they have not heard from the EPA after 30 days, and they should confirm the status of their application with the EPA or the delegated authority.

Comment: The commenter believes that the General Provisions should state that existing sources must comply with emission limits as expeditiously as possible. They should also state that owners or operators bear the burden of demonstrating that a compliance extension is necessary. The commenter also states that NESHAP should never authorize general extensions, because they require a case-by-case showing.

Response: The EPA expects all affected sources to meet all requirements of a rule by the compliance date, and the Agency will grant extensions only pursuant to case-specific showings. Industry-wide extensions have been used in the past only in unique circumstances where it was determined through a survey during regulation development that affected sources could not meet a compliance date resulting from a court-ordered promulgation deadline. With NESHAP compliance dates as long as three years after promulgation, such industry-wide

extensions should not be necessary. The Agency agrees that sources must have a legitimate reason for needing an extension, and the burden of proving that need rests upon the source making a request.

2.4.4 Compliance Certification

Comment: One commenter suggested that owners or operators should be required to regularly state whether their source is in compliance with applicable requirements, including those used to avoid NESHAP. This commenter also suggested that the General Provisions should also require certification that sources are in compliance with the accidental release provisions of section 112(r).

Response: Excess emission reports will be used in combination with the certification that is already required in title V permits as the primary means through which the EPA will monitor ongoing compliance with NESHAP. This combination of requirements removes the need to repeat a general certification requirement in the General Provisions. The General Provisions require sources that have determined that they are not affected by NESHAP to keep a record of their determination, to be made available for inspection by the Administrator. In addition, reporting requirements will be established on a source-specific or source category-specific basis when requirements are developed to allow a source to avoid compliance with an otherwise applicable NESHAP. Because the General Provisions do not implement the accidental release provisions of section 112(r) of the Act, they do not require certification of compliance with such provisions.

2.4.5 Non-Opacity Emission Standard

Comment: Several commenters argued that § 63.6(g), as proposed, does not conform to the statute. They stated that the statute permits an alternative standard even where the relevant standard is a numerical emission limitation. The proposed rule, however, specifically prohibits the use of alternative emission limitations in the case of numerical

emission limitations.

Response: Section 63.6(g) implements section 112(h) of the statute. That paragraph provides that:

112(h)(3) ALTERNATIVE STANDARD --If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitations will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under the requirements of subparagraph (1), the Administrator shall permit the use of such alternative by the source for the purposes of compliance with this section with respect to such pollutant.

The paragraph (1) referred to in section 112(h)(3) allows the Administrator to promulgate "a design, equipment, work practice, or operational standard, or combination thereof" when it is not feasible to prescribe or enforce an emission standard for a category of sources. The authority of section 112(h)(3) is limited therefore to authorizing alternatives demonstrated to achieve "a reduction in emissions...equivalent to the reduction in emissions...achieved under the requirements of paragraph (1)," which are work practice requirements. Section 112(h)(3) does not provide authority for the Administrator to authorize alternatives to anything but standards promulgated under authority of section 112(h)(1).

Nevertheless, the EPA is deleting the second sentence of § 63.6(g)(1) because the Agency believes that the general rulemaking authority of the Act would provide the authority to allow the Administrator to consider a petition from an individual source for permission to use an alternative means of control under some circumstances.

Comment: One commenter believes that the last sentence of § 63.6(g)(1) should be deleted, because section 112(h)(3) of the Act does not authorize the EPA to require operation and maintenance and quality assurance/quality control procedures as a condition for using an alternative emission standard.

Response: The commenter is in error. Section 112(h)(1) authorizes the Administrator to "include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment." Section 112(h)(3) says that an alternative standard must meet the requirements of section 112(h)(1). No changes were made to the final rule.

Comment: One commenter wants the EPA to specify in the General Provisions the procedures for requesting alternative means of emission limitation.

Response: Procedures for requesting alternative means of emission limitation will be defined in individual standards.

2.4.6 Opacity and Visible Emissions

Comment: The commenter believes that it is not appropriate for the Administrator to make a finding of compliance relevant to an opacity standard under § 63.6(h)(2)(ii) based on operation and maintenance activities without actual evidence of compliance or noncompliance. The commenter also believes that the provisions of § 63.6(h)(5)(iv) are inappropriate as the Administrator is unlikely to accept the results of observations conducted by an uncertified observer, yet the source is not allowed to delay performing the observations because of the lack of availability of an observer.

Response: In general, the EPA agrees with the commenter, and § 63.6(h)(2)(ii) has been deleted from the final rule. However, in some cases a correlation may be established between work practices and opacity or visible emissions. If such a correlation is established for a particular source category or source, the relevant standard will include provisions for the Administrator to make a finding of compliance with an opacity or visible emissions standard based upon an evaluation of an owner or operator's operation and maintenance practices.

The Agency does not recognize the owner or operator's

inability to secure a certified visible emissions observer, nor does the Agency accept data from uncertified observers. Therefore, § 63.6(h)(5)(iv) has been deleted from the final rule.

Comment: One commenter made several comments on § 63.6(h), compliance with opacity and visible emission standards. The commenter states that an affected source should be shielded from enforcement for the time while the EPA is considering adjusting an opacity standard, and that, consequently, the last sentence of § 63.6(h)(9)(i) should be deleted. The commenter believes that the request to use an alternative should be deemed approved if it is not denied by the EPA within 60 days. The commenter also believes that the requirement for the Administrator to make a finding under paragraph (h)(8) before an owner or operator can file a petition to adjust an opacity standard should be removed. The commenter suggests allowing the Administrator "or the owner or operator" to make a finding under paragraph (h)(8).

Response: The Agency has a policy against "no action assurances" and cannot provide a shield to sources that are out of compliance. All applicable requirements remain effective until an alternative is approved. Also, the Agency's mandate to protect the environment would not allow automatic approval of an alternative proposal and, therefore, the EPA has retained the provisions at §§ 63.6(h)(8) and (h)(9).

Comment: One commenter asked if § 63.6(h)(7)(v), which describes the actions a source must take when using a COMS to demonstrate compliance with an opacity emission standard, assumes that visual observations and COMS data are in conflict.

Response: The commenter is correct that § 63.6(h)(7)(v) concerns a situation where visual observations indicate an exceedance, but the source has notified the Administrator that COMS data will be used to demonstrate compliance.

Comment: One commenter stated that the intent of § 63.6(h)(9), which allows a source to petition the Administrator to adjust an opacity standard for a source that is in compliance with all relevant standards except for the relevant opacity emission standard, needs to be clarified regarding whether it assumes that the basis for setting the original opacity standard was invalid.

Response: Section 63.6(h)(9) does not assume that the basis for setting the original opacity emission standard was invalid. Rather, it allows the source to petition the Administrator for an adjustment in the opacity emission standard in the event that the affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard. However, the source must demonstrate that it and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity emissions during the performance tests and that the performance tests were conducted under the conditions established by the Administrator.

Comment: One commenter requested that both the part 63 and part 60 opacity reading requirements be revised to avoid a requirement that 3 hours of observation be required. This requirement means that two staff members must be present for each test. The commenter also said that it does not seem possible for anyone to make 3 hours of observations without suffering eye fatigue. The commenter suggested the following language:

When less than the full 3 hours of 30 - 6 minute averages are recorded, a statement of the visible emissions shall be included with those recorded observations. Following initial compliance, the minimum period of time allowed for determining compliance with the opacity standard using method 9 shall be one 6-minute average.

The EPA should also consider that MACT standards themselves may eliminate or minimize the need for visual emission

readings.

Response: The EPA appreciates the commenter's concern; however, neither the regulations nor Method 9 require that the three hours of observation be continuous. Rather, guidance for Method 9 observers recommends frequent short breaks for exactly the reasons discussed by the commenter.

2.4.7 General Operation and Maintenance

Comment: Several commenters requested clarification on the meaning and intent of the phrase in § 63.6(e)(1)(i), which requires sources to operate "...in a manner consistent with good air pollution control practices for minimizing emissions." One commenter said that the provisions of §§ 63.6(e)(1)(i) and (e)(1)(iii) are unenforceable, do not give sources sufficient notice of what is required, and have no place in a properly written regulation. According to the commenter, the most appropriate place for these requirements is in an individual standard or permit.

One commenter said that the requirement in § 63.6(e)(1)(i) that sources minimize emissions at all times has no statutory justification nor can any quantitative measure be reasonably applied to the practice of "minimizing emissions."

Finally, commenters said that §§ 63.6(e)(1)(iii) and (e)(2), which contain criteria for determining whether acceptable operation and maintenance practices are being used, should be deleted because nothing in the Act authorizes the EPA to adopt and enforce operation and maintenance requirements independent of relevant MACT standards. Under the EPA's proposal, a company could be in full compliance with the MACT standards and yet be subject to violations of operation and maintenance requirements.

Response: The EPA intends the provision in § 63.6(e)(1)(i) to require sources to take all steps necessary at all times, including during upset conditions (that may occur during startups, shutdowns, and malfunctions) to

minimize environmental impact. The term "good air pollution control practices" is intentionally broad and nonprescriptive to require sources to implement reasonable actions to minimize emissions for their particular situations. Thus, it is appropriate for these requirements to be located in the General Provisions. The EPA agrees that the conditions by which a source will maintain "good air pollution control practices" will become more specific in the operating permit. Section 63.6(e)(1)(i) has been revised to qualify that the requirement to minimize emissions applies "at least to the levels required by all relevant standards."

No change is being made to §§ 63.6(e)(1)(iii) and (e)(2). Section 302(k) of the Act authorizes operation and maintenance requirements for a source to ensure continuous emission reduction when the EPA establishes an emission limitation or emission standard. In addition, for standards established under section 112(h) of the Act, section 112(h) provides that ". . . In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment." Because operation and maintenance requirements are part of, and not separate from, MACT standards (or other NESHAP), the EPA may enforce against violations of operation and maintenance requirements independent from violations of other requirements in the standard such as emission limits. Having these requirements be independently enforceable, even in the absence of proof of actual air emissions, will ensure that operation and maintenance provisions are followed.

Comment: One commenter objected to the provisions of §§ 63.6(e)(1)(i) and (e)(iii), which imply that enforcement action would take place when operation and maintenance requirements were deviated from, regardless of whether the deviation resulted in excess emissions. The commenter

suggested that § 63.6(e)(1)(iii) be deleted.

Another commenter said that the final rule should recognize that actions that are inconsistent with the startup, shutdown, and malfunction plan [required under § 63.6(e)(3)] do not constitute a violation unless the failure to act consistently with the plan was a material factor in delaying a correction of the malfunction or minimizing exceedances during startup and shutdown. In addition, the final rule should recognize that emissions that occur during such an event are federally permitted releases as long as the permittee has acted in accordance with the plan.

One commenter said that sources should not be in jeopardy of two violations for the same event, i.e., excess emissions and improper maintenance.

Response: No changes have been made in §§ 63.6(e)(1)(i) and (e)(1)(iii). As stated in § 63.6(e)(1)(iii), operation and maintenance requirements are enforceable independent of emissions limitations or other requirements in standards. However, the commenter is correct that actions that are inconsistent with the startup, shutdown, and malfunction plan are not necessarily violations. The actions required by § 63.6(e)(1)(iii) are the minimum planned for by the owner or operator. If the owner or operator does not perform all of the actions for minimizing emissions (at least to the levels required by all relevant standards), and the failure to do so was not required for a safety or health reason, the owner or operator would not be in compliance with the plan. Also, with respect to federally permitted releases, as long as the plan and resulting actions fulfill its conditions, excess emissions are not considered violations for the purposes of the relevant subparts in part 63 only. However, depending on the circumstances, it is possible for an owner or operator to violate both the underlying standard and the startup, shutdown, and malfunction plan.

2.4.8 Startup, Shutdown and Malfunction Plan

Comment: One commenter suggested that § 63.6(e) be revised to add requirements that allow an owner or operator to conduct preventive maintenance on control equipment and monitors using a plan that employs good air pollution control practices to minimize emissions during the outage or cutback.

Response: Nothing in the General Provisions would prevent an owner or operator from conducting preventive maintenance and, in fact, these activities are a necessary component of good air pollution control practices. These activities could be made a part of the startup, shutdown, and malfunction plan. Therefore, no changes have been made to § 63.6(e).

Comment: Some commenters objected to the requirement in § 63.6(e)(3)(v) that startup, shutdown, and malfunction plans be retained for the life of the source. Commenters cited the potential for confusion and the inadvertent use of an outdated plan as reasons to limit the retention requirement to the current version of the plan only.

Response: Section 63.6(e)(3)(v) has been revised to clarify that, like other records that must be retained by the owner or operator, previous versions of startup, shutdown, and malfunction plans must be retained for at least 5 years. However, previous or superseded plans may be retained away from the work area as long as they can be made available for inspection upon request. In order to provide a sufficient record of compliance with the provisions of the plans, the current version of the plan must always be retained on-site and be available for review upon request.

Comment: One commenter said that although emissions from startup, shutdown, and malfunctions should be controlled, a new requirement for a separate plan is unnecessary. A similar set of plans was initially required in the Benzene Waste NESHAP proposed rule, but was removed as requested by OMB from the final rule because OMB felt that it was not necessary.

Response: The actions taken regarding the Benzene Waste NESHAP were specific to that standard and are not relevant to the more general requirements included in the final General Provisions.

Comment: A few commenters suggested that § 63.10(b)(2)(iii), which requires records of all maintenance on control equipment, be revised to require records of only relevant and material maintenance activities. The use of such absolute terms as "all" [required maintenance] will likely result in useless retention of information and costly storage of such information when it is not necessary, relevant, or material to issues of compliance.

Response: Upon consideration of this comment, the Agency has revised § 63.10(b)(2) to clarify that only "relevant" records must be retained. The owner or operator should be careful to retain all relevant records because, if upon inspection and review of the source's records it appears that some relevant records have not be maintained, the source could be subject to enforcement action.

Comment: Some commenters requested that recordkeeping requirements be separated into those for routine events and emergency events with different recordkeeping criteria applied to each. During malfunctions or emergency shutdowns, for example, the operator must focus full attention on safe operation and process control. A post-event review should be sufficient to document the source's efforts during these situations. Also, to impose this requirement would only increase a source's liability by allowing citations for violations that have nothing to do with exceedance of a permit limit or requirements. The use of such absolute terms as "all" and "any" will likely result in useless retention of information and costly storage of such information when it is not necessary, relevant, or material to issues of compliance. The commenter said that § 63.10(b)(2)(iv) should be revised to focus on keeping relevant and material information and that

operators should not be required to keep detailed contemporaneous records during a malfunction.

Response: Section 63.10(b)(2)(iv) does not require detailed, contemporaneous records during a malfunction. As discussed above, § 63.10(b)(2) has been revised to clarify that only relevant records need to be retained. However, the EPA needs some records of a startup, shutdown, or malfunction and the owner/operator's response if actions are outside of the planned response. The more complete the initial plan, the fewer activities outside the plan that have to be recorded. The recordkeeping required by § 63.10(b)(2)(iv) may be minimal during the event so long as the event and the response are adequately documented as part of the follow-on report.

Comment: Some commenters said that sources should not be required to keep records demonstrating that the startup, shutdown, and malfunction plan is being followed as required by § 63.6(e)(3)(iii) [and § 63.10(b)(2)(v)]. Operators at chemical plants are required to constantly watch monitors and make adjustments and will not have the time to fill out checklists. This requirement is unwise and unsafe as well as complex and burdensome. In addition, what is the point of having the plan if the source must keep records of every event to demonstrate that the plan was followed? The EPA also should make it clear that the selection of the type of recordkeeping system should be at the discretion of the owner or operator. Other forms of recordkeeping that could meet these standards are accident/incident reports, computer logs, and operating notes.

Response: The EPA does not agree that sources should not be required to keep records to demonstrate that their plan is being followed. A plan without some monitoring may not be effective and cannot be improved. The EPA has attempted to focus the plan and its implementation on the important aspects of minimizing emissions and demonstrating that the owner or operator is in compliance. It should be noted that one

purpose of the startup, shutdown, and malfunction plan is to allow the owner or operator to develop a compliance record. A minor amount of documentation is appropriate for actions consistent with the plan. On the other hand, actions that occur outside of the plan are of critical importance, and these actions require a report. It is essential that the owner or operator maintain sufficient records to demonstrate to the enforcing agency that the plan is adequate to address possible emission-causing events during startups, shutdowns, and malfunctions. The EPA encourages owners or operators to develop recordkeeping procedures that reduce the burden of developing these records and to describe how these procedures will be used as part of the plan. Furthermore, the change to § 63.10(b)(2) to require only the retention of "relevant" records may relieve some of the commenters' concerns regarding the amount and level of detail of information that should be recorded.

Comment: Several commenters expressed concern that facilities that are batch operations face extremely burdensome recordkeeping requirements if they are forced to record every startup and shutdown for a 5-year period. The definitions of startup and shutdown should be revised to exclude batch operations. Alternatively, recordkeeping and reporting should only be required for "unusual" startups and shutdowns.

Response: The definitions of "startup" and "shutdown" have not been revised to exclude batch operations as requested by the commenters. The EPA believes that the inherent flexibility that the owner or operator has in developing the startup, shutdown, and malfunction plan should allow batch operations to be included without causing an excess recordkeeping or reporting burden. In the promulgated rule, the owner or operator of batch operations is still required to maintain records of the occurrence and duration of each startup and shutdown of the operation, because that type of information is normally recorded. However, if actions taken

during a startup or shutdown are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, the owner or operator is only required to make a statement to that effect in the semiannual report submitted to the Administrator (or as specified otherwise in the relevant standard or in the source's title V permit). Any unusual circumstances related to startup and shutdown for batch operations for a particular source category will be addressed in the relevant standard. Also, to the extent that a source can, and is willing to, demonstrate that it can always achieve the emission limitation of the relevant standards, a source can essentially eliminate the need for actions under a startup, shutdown, and malfunction plan.

Comment: Section 63.6(e)(3)(viii) requires a revision of the startup, shutdown, and malfunction plan whenever a malfunction event occurs that is not covered by the plan. This requirement should only apply if the malfunction occurs twice or more.

Response: The EPA does not believe a required revision should be tied to a specific number of events. If an operator permanently eliminates a potential event that could cause a malfunction, then a plan change is not needed. On the other hand, if a malfunction occurs that is repeatable, then the plan should be revised within 45 days after the event, and §63.6(e)(3)(viii) has been revised to reflect this timeframe. As owners and operators gain experience with the process of developing and maintaining startup, shutdown, and malfunction plans that cover the appropriate events in the appropriate level of detail, the number of needed revisions should decline over time. No change has been made to the rule to specify a certain frequency of deviations from the plan before a revision is required.

Comment: A few commenters suggested that § 63.6(e)(3)(vii)(B) should be revised to include safety considerations. In some cases, certain air pollution control

equipment cannot be operated during startups or shutdowns due to the explosive potential of the materials being handled. In these cases, the owner or operator should be able to develop a startup, shutdown, and malfunction plan that contains provisions that allow the bypass or shutdown of the control device.

Response: It is allowable for owners or operators to develop provisions within a startup, shutdown, and malfunction plan that allow the bypass or shutdown of the control device for safety reasons. However, the Agency does not believe that § 63.6(e)(3)(vii)(B) should be revised to specifically include safety considerations. Instead, the owner or operator faced with this situation should explain to the enforcing agency why no other manner of startup or shutdown can occur that minimizes emissions and is safe.

Comment: One commenter questioned whether a regulatory agency will have the technical capability and expertise to properly evaluate a plan and determine where it is deficient and where changes may be needed. Plant engineers and operators should always be more familiar with the requirements of bringing a specific process on- or off-line.

Response: The purpose of the General Provisions requirements regarding the development and use of a startup, shutdown, and malfunction plan are to provide a goal and mechanisms to obtain that goal for owners and operators. The EPA recognizes that the owner or operator is the "expert" with respect to specific details of a process operation; this is why the owner or operator is the responsible party for developing the plan. However, there are certain generic procedures that constitute good operating practice within any source category, and the EPA will expect to see those demonstrated in the plan. In addition, in many cases, the EPA or regulatory agency will have sufficient expertise (or can obtain the expertise) to evaluate plans and to request changes in plans.

Comment: Section 63.10(c)(9), which requires sources with CMS to keep records of the "magnitude of excess emissions computed in accordance with the provisions of § 63.8(g) and any conversion factor(s) used" should be deleted because § 63.8(g) does not require determination of the magnitude of excess emissions, and because calculation of excess emissions during shutdown, startup, and malfunction are by definition incalculable.

Response: The EPA did not intend to require the calculation of excess emissions during periods of startup, shutdown, and malfunction. In fact, § 63.8(g)(5) states that "Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, ...shall not be included in any data average computed under this part." Therefore, § 63.10(c)(9) has been deleted.

Comment: Commenters requested that § 63.10(e)(3)(ii), which allows the owner or operator to request to reduce reporting frequency of excess emissions and CMS performance reports, state clearly that startup, shutdown, and maintenance periods are not to be considered in determining whether the source complies with the relevant standard.

Response: No change has been made to § 63.10(e)(3)(ii). As discussed in section IV.F.3 of the promulgation preamble, one purpose of the startup, shutdown, and malfunction plan is to provide a vehicle to support documentation that the plan either was or was not followed during startup, shutdown, or malfunction events when excess emissions occurred. If the plan was followed correctly, the owner or operator will be able to certify that the source remained in compliance with the plan to minimize emissions during the period of excess emissions.

Comment: Section 63.6(e)(3)(i) should specify when the startup, shutdown, and malfunction plan must be developed and implemented. Specifically, the source should not have to develop the plan before the compliance date for the relevant

standard or startup.

Response: The EPA agrees with the commenter, and § 63.6(e)(3)(i) of the final rule has been revised to state that the plan shall be developed and implemented by the owner or operator by the source's compliance date for that relevant standard.

2.5 PERFORMANCE TESTING REQUIREMENTS

2.5.1 Applicability

Comment: One commenter said that the statement in § 63.7(a)(1) that applicability applies to sources that are required to do ". . . another form of compliance determination" is confusing. For example, section 112 standards may set equipment standards with compliance demonstrated by means of periodic inspections or work practice standards, and the applicability provisions could mean that notifications, site plans, etc., under § 63.7 would be required. According to the commenter, this result would be unjustified and serve no useful purpose. There should be no implication that a compliance demonstration is required by affected sources.

Response: The provisions of § 63.7 are primarily intended to apply in situations where performance tests are required to determine compliance with subparts of part 63. It was not the EPA's intent that the performance testing provisions of § 63.7 apply to periodic monitoring or other periodic compliance determinations required under subparts of part 63.

2.5.2 Performance Test Dates

Comment: The EPA should revise § 63.7(a)(2)(iii) so that if construction has begun on a source prior to proposal of a relevant MACT standard (which would make the source an existing source, by definition), but the source does not startup by the effective date of the MACT standard, the time allowed for performance tests will begin running at startup.

Response: The commenter is correct that

the performance test dates do not account for the situation where a source commences construction before the proposal of the MACT standard, but does not startup until after the effective date of the standard. This situation is probably rare, but not inconceivable. The following language has been added to § 63.7(a)(2)(iii) to clarify the situation: "or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant emission standard."

In this situation, a source would retain existing source status as long as it had, before the proposal date of the relevant emission standard, obtained all necessary preconstruction approval or permits and it had contracted to begin construction or reconstruction such that there would be a substantial loss in the event of cancellation. In addition, the construction or reconstruction process must be continuous and completed within a reasonable amount of time. [See section 169(2)(A) of the Act for the basis of the Agency's decision in response to this comment.]

Comment: One commenter said that the provisions allowing the extension of a test date in the event that the Administrator fails to approve or disapprove a test plan should be changed to a requirement that the date be extended [§ 63.7(c)(3)(ii)(B)].

Response: As discussed in section IV.D.2.d of the promulgation preamble, the requirement to submit a site-specific test plan has been revised to be at the Administrator's request. The EPA anticipates that far fewer test plans will be subject to the review process as a result of this change. However, the rule [§ 63.7(c)(3)(ii)(B)] has been revised to clarify that if the Administrator does not approve the site-specific test plan (or request to use an alternative method) within 30 days before the performance test is scheduled to take place, then the performance dates specified in § 63.7(a) shall be extended such that the owner

or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan (or request to use an alternative method).

Comment: Some commenters believe that the EPA should revise § 63.7(a)(2) to allow extensions of the deadline for performance testing, when the deadline cannot be met due to circumstances beyond the reasonable control of the owner or operator. Two commenters said that the EPA should provide a mechanism to change the date of a performance test when problems at the source make a change necessary, and that if a test must be rescheduled, the EPA should provide that a source may notify the EPA by telephone to reschedule the date. Alternatively, according to one commenter, § 63.7(i) should be added to allow case-by-case extensions for performance testing under special situations such as an inability to complete modifications to an air pollution control system in time to conduct the performance test, seasonal operations that restrict the facility's ability to conduct performance tests, unplanned outage of the facility due to equipment problems, etc.

Response: The Agency agrees that there could be unforeseen occurrences at a source that would warrant an extension of the performance test date. Therefore, as a result of these comments, § 63.7(b) has been revised to add the following language:

...In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section, due to unforeseeable circumstances beyond his or her control, the owner or operator shall notify the Administrator within 5 calendar days prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any

other action under the Act.

Comment: Several commenters stated that they need at least 60 days after the EPA's approval of an alternative test method to conduct a performance test to accommodate possible EPA comments on the alternative method and to coordinate the several facets of a typical test program. In addition, the longer time period is more consistent with the requirements in the proposed rule for performing a test when an alternative method is not requested. The commenters requested that § 63.7(c)(3)(ii)(B) be revised to allow 60 days to conduct the test.

One commenter stated that the EPA should allow an extension of time for conducting performance tests in all instances when an alternative test method is proposed in good faith. One commenter suggested that the final rule provide for performance tests to be conducted 90 days after EPA approval of an alternative test method.

Response: The EPA agrees with the commenters that more time may be required to conduct the performance test upon approval of the use of an alternative test method and therefore has revised the final rule to allow 60 days after EPA approval of an alternative test method to conduct a performance test. If more than 60 days is needed for conducting the performance test, the owner or operator can negotiate with the EPA on a case-by-case basis. Section 63.7(c)(3)(ii)(B) of the final rule has been revised to read:

If the owner or operator intends to demonstrate compliance by using an alternative to any test method... the performance dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan or after the alternative method is approved.

A similar change was made to related provisions in § 63.8(e)(3)(v)(B) regarding the timing requirements related to the approval of alternative monitoring methods.

2.5.3 Site-Specific Test Plan

Comment: One commenter stated that §§ 63.7(c)(3)(iii)(A) and (c)(3)(iii)(B), which preclude the Agency's actions regarding site-specific test plans from relieving the owner or operator from meeting their responsibilities under the Act or the Administrator from implementing the Act, will effectively prohibit the use of alternative test methods unless the EPA delegates approval authority or is committed to expedited review. Otherwise, the EPA review may take more time than is allowed for compliance.

Response: It is the owner or operator's responsibility to submit a request to use an alternative method sufficiently in advance to ensure that there is time for the enforcing agency to conduct a sufficient review of the proposed method. The request may be submitted in advance of the site-specific test plan. In any case, as discussed in section IV.D.2.d of the promulgation preamble, the final rule has been revised to make review of site-specific test plans at the discretion of the Administrator. This change should expedite the review of those plans that are requested by allowing the Agency to focus its resources on more critical efforts and thereby allow the majority of tests to occur without specific prior review and approval of test plans. In addition, this authority may be delegated to State agencies that successfully obtain the authority to administer the section 112 program in their States. Finally, as discussed in section 2.5.2, § 63.7(c)(3)(ii)(B) has been revised to clarify that the performance test date will be extended if the Administrator fails to grant approval within 30 days before the performance test is to take place and to extend the performance test period from 30 days to 60 days. Taken in cumulative, these changes will allow the use of alternative test methods.

Comment: Some commenters felt that the approval of test plans by the Agency should be binding on the EPA; that is, the owner or operator should not be subject to enforcement action

if the approved plan is followed and the test results indicate noncompliance.

Response: Section 63.7(c)(3)(iii) explicitly states that the owner or operator has the legal responsibility for compliance. The EPA's approval of a site-specific test plan does not relieve the owner/operator from responsibility of compliance with the standard. If a test plan is approved, and the source proceeds with the testing according to the plan, and then, after the fact, the EPA determines that the test results indicate noncompliance, then it is the responsibility of the source to rectify the situation.

2.5.4 Performance Test Audit

Comment: Several commenters had concerns regarding the external quality assurance plan and its requirement to include a performance test method audit. Commenters said that the requirement for an external audit plan should be deleted, or that external audits should be optional at the request of the EPA.

In addition, two commenters had concerns regarding the timeframe within which test audit material from the EPA must arrive at the source. One commenter stated that the test audit should be waived if audit materials do not reach the source at least 30 days before the test. One commenter stated that test audit materials should be sent to the facility 7 days before the test is scheduled to begin.

One commenter supported the proposal to require performance test audits.

Response: No change has been made in the final rule regarding the requirement for a performance test method audit. The EPA historically has developed source-specific test methods to define the procedures to be used in obtaining compliance-related data to ensure the uniformity and quality of this data. In the late 1980's, the EPA began including performance audit requirements in test methods for the measurement of gaseous pollutants. One type of performance

test audit is a procedure to analyze blind samples, the content of which is known by the EPA, simultaneously with the analysis of performance test samples. The purpose of the performance test audit is to check bias in the measurement of compounds in the performance test sample, that is, to check whether the tester is measuring the right compound with an acceptable degree of accuracy. The Administrator has determined that the performance test audit program is necessary to ensure the quality of data from performance tests conducted for part 63 standards.

Section 63.7(c)(4)(i) has been revised to require a source to request performance audit materials 45 days prior to the test to allow timely delivery to the source. If the requested materials do not arrive at the source in time for the test, the audit will be waived, and the test may proceed as scheduled.

Comment: The EPA should revise the definition of "performance audit" so that gas standards from any source may be used, so long as the analyst does not know the composition of the sample. As proposed, it is inappropriate, expensive, and inconvenient for sources to be required to obtain gas standards from EPA alone.

Response: The definition of "performance audit" has not been changed in the final rule. The EPA disagrees that the program is inappropriate, inconvenient, or expensive. In fact, the EPA provides the audit materials free of charge. As discussed in the previous response, the integrity of the audit program is of utmost concern to the Agency. However, if circumstances in the future warrant a change in current procedures, the General Provisions will be amended accordingly.

Comment: One commenter said that the EPA should limit subsequent remedial actions under § 63.7(c)(4)(ii) to test results of the performance audit.

Response: Section 63.7(c)(4)(ii) states that the Administrator shall have sole discretion to require any subsequent remedial actions of the owner or operator based on

the performance audit results. The Administrator believes that this language clearly states that remedial actions required of the owner or operator will be based on the test results.

2.5.5 Performance Testing Facilities

Comment: Some commenters stated that § 63.7(d)(5) should be revised to clarify the meaning of what constitutes "safe and adequate" either in the General Provisions or in the individual standards or that the determination of safe and adequate facilities should lie with the source, not with the Administrator. One commenter said that the requirement should be deleted.

One commenter said that §§ 63.7(d)(1)(i) and (d)(1)(ii) could force sources to undergo considerable expense to reconstruct ductwork and stacks without providing sufficient, written justification from the Administrator that states why the current configuration will not allow adequate testing of the source and without giving the source an opportunity to respond. One commenter said that § 63.7(d) should provide that man-lifts and cranes with working baskets can be acceptable as safe sampling platforms and safe access.

Response: There has been no change to the provisions of § 63.7(d)(5). The Administrator retains the right to request the owner or operator to provide performance testing facilities that he or she deems necessary for the safe and adequate testing of a source. At a minimum, the source owner or operator must provide good access, a power supply, and safe working conditions, such as stable scaffolding or other structures necessary for testing the source. The Administrator does not anticipate that any of these items would require a significant expenditure by the source owner. Also, the Administrator did not intend that § 63.7(d) preclude the use of man-lifts and cranes as acceptable safe sampling platforms and, therefore, does not see the validity of specifically stating that they can be used.

2.5.6 Conduct of Performance Tests

Comment: Several commenters had concerns regarding the lack of a definition of "representative performance" required for performance test conditions. One commenter said that § 63.7(e) should be revised to reflect maximum design operating conditions that the source or control device will normally experience. Several commenters stated that the source should be allowed to determine representative operating conditions for a performance test. One commenter thought that the source should determine representative operating conditions, subject to EPA approval. Another commenter stated that § 63.7(e)(1) is acceptable as proposed.

Response: The term "representative performance" used in § 63.7(e) means performance of the source that represents "normal operating conditions." At some facilities, normal operating conditions may represent maximum design operating conditions. In any event, representative performance or conditions under which the source will normally operate are established during the initial performance test and will serve as the basis for comparison of representative performance during future performance tests. To clarify this intent, a phrase has been added in § 63.7(e) to indicate that representative performance is that based on normal operating conditions for the source.

Comment: Two commenters requested that § 63.7(e)(3) be revised to require only a single run of a performance test. Multiple performance tests are time consuming, resource intensive, and a single run should be sufficient in most instances. The commenters said that it would be more appropriate for the EPA to set requirements in individual standards if multiple runs are warranted.

Response: No change has been made in the final rule as a result of this comment. Based on past experience, the Agency has determined that it is in the best interest of the source and the public well being for the source to complete three

separate runs of the performance test. This will allow the source to use the arithmetic mean of the results of the three runs for the purpose of demonstrating compliance with the relevant standard, rather than relying on one run, thus presenting more representative results of the actual performance.

Comment: With respect to § 63.7(e)(3)(i), conduct of performance tests, commenters wanted to know how the Agency would determine compliance with a relevant standard if one of the samples were "accidentally lost."

Response: In the event a sample is lost after the testing team leaves the site, and is thus unavailable for analysis, the owner or operator must notify the Administrator. The Administrator will review the circumstances associated with misplacement of the sample and approve the replacement of the test run with the results of an additional test run by the owner or operator.

2.5.7 Alternative Test Method

Comment: Several commenters stated that § 63.7(f)(5), which requires continual use of an alternative test method for subsequent performance tests, should be clarified to allow sources to use either an approved reference test method or an approved alternative test method for performance tests. Commenters suggested adding a sentence at the end of § 63.7(f)(2)(i) that states "The owner or operator may submit an amendment to the site-specific test plan to include alternative test methodologies at any time", and adding a phrase at the end of § 63.7(f)(5) that states "until granted permission to change by the procedures in (2) of this paragraph", to incorporate flexibility into the testing requirements.

Response: The Administrator has determined that if an owner or operator uses an alternative test method for an affected source during a required performance test, then for subsequent performance tests, the owner or operator should

continue to use the alternative test method for that affected source. Continued use of the alternative test method for subsequent performance tests will allow subsequent results to be comparable to the initial performance test. However, § 63.7(f)(5) was not intended to disallow the owner or operator the ability to change performance test procedures with the prior approval of the Administrator. Therefore, § 63.7(f)(5) will be revised as follows:

If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source until he or she receives approval from the Administrator to use another test method as allowed under § 63.7(f).

Comment: Commenters suggested that § 63.7(f)(2)(i) be amended to allow the inclusion of alternative test methods in a test plan at any point prior to Administrator approval.

Response: As a result of comments, the requirement that all site-specific test plans be submitted to, and approved by, the Administrator has been deleted. However, owners or operators still must prepare site-specific test plans. If an owner or operator intends to use an alternative test method he or she still must notify the Administrator.

In light of this change, § 63.7(f)(2)(i) is revised as follows:

Notifies the Administrator or his or her intention to use an alternative test method not later than with the submittal of the site-specific test plan (if requested by the Administrator) or at least 60 days before the performance test is scheduled to begin if a site-specific test plan is not submitted.

2.5.8 Performance Test Waiver

Comment: Two commenters requested that § 63.7(h) be changed to provide that a source with a compliance extension should not have to apply separately for a performance test waiver. Other commenters said that the EPA should amend § 63.7(h)(3)(i) so that a site-specific test plan is not

required if a source has requested a waiver of a performance test, unless the reviewing authority has determined that the request is frivolous.

Several commenters stated that § 63.7(h)(5) should be revised to provide a source with adequate notice of disapproval of a waiver of performance tests so that the source can comply within the required time. The source should be allowed to submit additional information as well. One commenter stated that an automatic extension should be granted to the owner or operator if the EPA does not act in a timely manner.

Response: The Administrator views the application for waiver of performance tests to be necessary to justify the request. The Administrator disagrees that the submission of an application for a waiver of performance tests places undue burden on the owner or operator. The application must be submitted with the request for extension of compliance or at the same time that a site-specific test plan or notification of a performance test would be required.

However, the Administrator agrees that a site-specific test plan is not necessary if a source has requested a waiver of a performance test. Therefore, § 63.7(h)(3)(i) has been revised as follows:

...the application for a waiver of an initial performance test shall be submitted in place of the site-specific test plan under paragraph (c) of this section.

Section 63.7(h)(4) specifies the process by which the Administrator will approve or deny a request for a waiver of a performance test. This process will occur within the framework of the review and approval process specified under § 63.6(i)(8) for compliance extension requests and § 63.7(c)(3) for site-specific test plans. Both of these processes provide the owner or operator with adequate notice of intent to deny a request for a waiver of a performance test and allow the owner or operator to submit additional

information. To clarify the relationship between these processes, § 63.7(h)(4) has been revised as follows:

- (i) Approves or denies an extension of compliance under § 63.6(i)(8); or
- (ii) Approves or disapproves a site-specific test plan under § 63.7(c)(3);...

Comment: One commenter requested clarification of the requirement that a source submit a performance evaluation test plan [under § 63.8(e)(3)(iii)] when a source has received a waiver to conduct a performance test under § 63.7(h).

Response: Section 63.8(e)(3)(iii) includes provisions for sources that are required to conduct performance evaluation tests for purposes of demonstrating that the monitoring system is in compliance with the standard, but may not be required to conduct a performance test under § 63.7 to demonstrate compliance with the emission standard.

2.5.9 Test Methods

Comment: Some commenters requested that the EPA publish Method 301 for public comment in relation to part 63. In particular, commenters are concerned with the method's applicability to HAP and believe that the method may be more appropriate to criteria pollutants.

Response: The Administrator has determined that Method 301 is applicable to HAP. Method 301 has been proposed, subjected to public comment, and promulgated with the Early Reduction rule (57 FR 61970, December 29, 1992).

Comment: One commenter stated that the EPA should not require alternative methods to be validated by Method 301 if the owner or operator and the reviewing authority mutually agree to changes from a standard test method.

Response: If a source wants to use an alternative method to determine compliance in place of the method referenced in the standard, it is important to establish how the alternative method compares to the referenced method. The purpose of Method 301 validation is to establish the precision and bias of the alternative method in relation to the referenced

method. Unless there are extenuating circumstances, it is unreasonable to suggest that agencies approve an alternative without this information. It should be noted that some changes to test methods have been previously approved by the EPA, and future uses of identical methods could possibly be approved without an additional Method 301 analysis.

2.6 MONITORING REQUIREMENTS

2.6.1 Overall Monitoring Approach

Comment: One commenter said that CEMS should be required for all HAP emitted unless the owner or operator can demonstrate that this is infeasible. When the use of CEMS is not feasible, the General Provisions should require the most stringent feasible monitoring. In addition, 24-hour per day operation of monitors should be required to avoid toxic dumping at night, which has been a problem according to the commenter.

Response: The intent of NESHAP is to require installation and proper operation of MACT. Continuous emission monitoring of some organic HAP emissions is not feasible with current technologies. Furthermore, in some cases, emissions monitoring is not necessary to ensure that control devices are installed and operated properly. The General Provisions include provisions for conducting an initial performance test to demonstrate that controls achieve the required level of emission reduction and continuous monitoring of key control device operating parameters to ensure the device continues to be well-operated. Excursions outside the established parameter ranges must be reported.

There are currently no technologies available to continuously monitor some of the 189 HAP regulated under section 112 of the Act. While total organic carbon concentration monitors are available, these would be an imprecise measure of HAP emissions. Furthermore, concentration monitors alone would not measure emissions effectively because emissions are a function of both flow and

concentration. Therefore, in order to continuously measure emissions, both continuous concentration monitors and continuous flow monitors would need to be installed at each and every control device. To measure percent reduction, concentration and flow monitors would have to be installed at both the inlet and outlet of every control device. After installation, periodic calibration, maintenance, and QA/QC programs would be necessary to ensure accurate data. Even if it were technically feasible, such monitoring requirements would be extremely costly relative to the proposed parameter monitoring approach. The increased costs would result from the number of monitors (inlet and outlet) that would need to be installed and the fact that costs to purchase, calibrate, and maintain CEMS (for compounds that can be measured with CEMS) are higher than costs for temperature monitors or most other operating parameter monitors. For very limited additional assurance that emission reductions are achieved, the cost would be very high.

The EPA must comply with the Paperwork Reduction Act (PRA) in developing monitoring, recordkeeping, and reporting requirements for NESHAP. The objectives of the PRA are to improve the quality of data that are collected and minimize the burden on the public. The requirements of the General Provisions are consistent with the PRA. The collection of additional information that is not necessary to determine compliance cannot be justified. Therefore, the approach outlined in the General Provisions is reasonable and sufficient to ensure sources subject to the General Provisions conduct appropriate monitoring to demonstrate compliance with the individual emission standards.

Comment: The monitoring requirements in the General Provisions are expensive and burdensome. The EPA should provide flexibility and minimize operating costs where possible.

Response: The EPA always attempts to reduce the burden

of regulatory requirements on the regulated community to the maximum extent. The EPA believes that the monitoring requirements in the General Provisions are the "bare minimum" necessary to be able to determine that sources subject to part 63 are in compliance.

Comment: Two commenters believe that States should remain free to require more frequent monitoring under Federal law whenever they think it necessary or appropriate.

Response: There is nothing in the General Provisions that precludes States from requiring more frequent monitoring. In addition, the General Provisions only establish a general framework for monitoring. It is possible that individual MACT standards will require more frequent monitoring of certain emission sources within specific source categories to address source category-specific concerns.

2.6.2 Applicability of Monitoring Requirements

Comment: One commenter said that § 63.8 should not apply to emission limitations developed under sections 112(g) or 112(j) of the Act, except to the extent specifically referenced in the operating permit for a source. The predetermined contours of the General Provisions are likely to be a poor "fit" to case-by-case MACT determinations, and the § 63.8 provisions should only be adopted after careful consideration.

Response: As discussed in section IV.D.1.a of the promulgation preamble, the General Provisions establish general monitoring and other requirements for all standards. Case-by-case MACT standards will, however, have the discretion to determine the specific monitoring requirements for that source.

Comment: One commenter said that the EPA should amend § 63.8(a)(1)(i) to clarify that § 63.8 applies only to sources required to do continuous monitoring, not any type of monitoring.

Response: The general monitoring requirements of the

General Provisions affect all sources subject to a part 63 rule. Section 63.8 mostly contains requirements for continuous monitoring systems. However, as stated previously in the revised definition of CMS, § 63.8 applies to all sources subject to continuous, or other manual or automatic monitoring, not only continuous monitoring, as defined by the regulation.

2.6.3 Conduct of Monitoring

Comment: Several commenters said that the EPA should not require monitors on individual streams that are combined before release to a control system. This requirement would be very expensive in terms of capital and operation costs, including major increases in recordkeeping and reporting requirements. Section 63.8(b)(2)(i) should be revised to clarify that a monitor is necessary only at the point immediately before input to a control device.

Response: This issue must be addressed within the context of each subpart. Depending upon how the source(s) and pollutant(s) are regulated, locating the monitor immediately before a control device where exhaust streams are combined may not yield representative measurements. However, calculations to accurately represent emissions downstream may be possible. Combining an affected stream with one that is subject to a different standard or with a stream that is subject to no standard may be considered dilution. Combining separate streams affected by the same regulation might be monitored together if adjusted for flow rate, volume, concentration, or other relevant parameter. If the standard directly affects the emission point at an individual unit, downstream monitoring may be less viable. For these reasons, the Agency does not agree with the commenters' suggested revisions to § 63.8(b)(2)(i).

2.6.4 CMS Operation and Maintenance

Comment: Section 63.8(c)(1) should be revised to specify that the CMS should be operated as specified "in the operation

and maintenance procedures as written by the CEMS manufacturer."

Response: As a result of this comment, § 63.8(c)(1)(iii) has been revised to clarify that operation and maintenance procedures as written by the CMS manufacturer and other guidance can also be used to maintain and operate each CMS. The operation and maintenance procedures required for CMS are not limited to only those references specifically listed in § 63.8(c). The owner's manual is one among many guides that a source should reference to operate consistent with good air pollution control practices.

Comment: One commenter said that the § 63.8(c)(4)(ii) requirement that only allows a 15-minute cycle should be revised to allow at least 1 hour. In addition, a waiver mechanism for extending the cycle beyond one hour should be provided for situations where it is technically or economically infeasible to achieve a 1-hour cycle. The commenter said that because individual HAP must be analyzed, gas chromatograph systems are usually needed and that even simple one-HAP systems may not be able to achieve 15-minute cycles.

Similarly, § 63.8(g)(2) should be revised to specify that data from CMS shall be reduced to hourly averages when more than one measurement is made per hour, except when otherwise stated in the relevant standard. Another commenter noted that the language in § 63.8(g)(2) regarding CEMS data reduction appears to be taken directly from § 60.13(h). However, neither section includes requirements for acceptable data reduction procedures for hours that contain QA/QC activities, maintenance, or limited downtime. Without guidance similar to part 75 on how to handle data from an incomplete averaging period, sources would not be able to retain representative data for hours with less than 4 (15-minute) values to average.

Response: The EPA will continue to use the 15-minute cycle provision in the General Provisions, but, as with other

requirements in the General Provisions, this may be overridden by individual standards, as appropriate. The specific requirements for CMS downtime allowed depend upon the reporting and averaging periods specific to each regulation and should be accounted for in setting up the applicable minimum data availability requirements.

Section 63.8(g)(2) has been revised to account for periods when calibration, quality assurance, or maintenance activities are being performed. During these periods, a valid hourly average shall consist of at least two data points with each representing a 15-minute period.

Comment: One commenter stated that §§ 63.8(c)(6) and (7), which deal with zero and calibration drift requirements for CMS, appear to have been written with criteria pollutant emission monitors in mind, and they are not appropriate for HAP emission monitors and continuous parameter monitors. Requirements specific to HAP and MACT should be established in each applicable subpart or in new appendices to part 63, or the acceptable calibration drift should be part of the quality control plan required under § 63.8(d)(1).

Similarly, another commenter noted that references to part 60, Appendices B and F, under § 63.8(a)(2) are not totally consistent with part 63 requirements.

Response: As discussed in section IV.D.1.c of the promulgation preamble, relevance of part 60 performance specifications, the EPA agrees that references to part 60 CEMS performance specifications are inappropriate, and they have been deleted from § 63.8 of the final rule. Specific methods to evaluate CEMS performance will be included within the individual subparts of part 63. In all instances, the required performance specifications will be subject to public comment upon proposal.

Comment: One commenter believes that daily zero and high level checks required by § 63.8(c)(6) are inappropriate for parameter monitors. Instead, parameter monitors should be

calibrated and system-checked upon installation, checked when the system is shutdown or at least once per year, and audited daily to verify system responses.

Another commenter suggested that § 63.8(d)(2)(ii) should be revised to include the zero and calibration frequency for parameter monitoring systems, along with other QA functions, with the site-specific test plan.

Response: The Agency believes that a daily audit of parameter monitors is necessary, and therefore, no changes were made to the rule. The Agency maintains that the zero and high level calibration drift should be checked as part of the daily audit procedures. Without this daily check, it is not possible to know when the 24-hour zero drift exceeds two times the limits of the applicable performance specifications, and thus to know when to adjust the instrument.

Comment: According to commenters, § 63.8(c)(3), which requires the CMS or CEMS be certified prior to the performance test, appears to conflict with §§ 63.8(e)(2) and (e)(4), which allow certification during the performance test.

Response: The commenter is correct, and § 63.8(c)(3) has been revised as follows:

All CMS shall be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting the performance tests under § 63.7. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

Comment: One commenter said that it is unclear whether EPA intended to be as strict as part 75 or to follow part 60 in identifying an out-of-control limit under § 63.8(c)(7)(i). The commenter added that quality control programs that combine adjustment control and out-of-control limits (at levels identified in part 60) have been shown to provide for acceptable operations within established relative accuracy requirements.

Response: The intent of the language in § 63.8(c)(7)(i) is that CMS data are to be available "at all times", but the exact definition of this requirement is left to the individual regulations or applicable performance specification.

Comment: One commenter said that the established calibration drift specifications in part 60 are based on "percent of span" and there is no mention of how to establish the appropriate span levels based on expected emission levels. The commenter said that the EPA should specify guidance on establishing appropriate span levels in each subpart.

Response: As discussed above, the EPA has revised the regulation to remove references to part 60 performance specifications. By referencing the applicable performance specification, instead of those in part 60, the part 63 General Provisions clarify that individual standards will develop these performance specifications. The Agency will be aware of these requirements when developing each regulation, so that source category-specific requirements are included.

Comment: One commenter suggested that § 63.8(c)(7)(ii) should be revised to state that a partial failure of a multiplexed CMS does not render the entire system out of control and all data invalid.

Response: As a result of other comments, the Agency has changed the language in 63.8(c)(7) as follows:

- (i) A CMS is out of control if--
 - (A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in the applicable performance specification or in the relevant standard; or
 - (B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or
 - (C) The COMS CD exceeds two times the limit in the applicable performance specification in the relevant standard.
- (ii) ...During the period the CMS is out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

The Agency believes this language clearly states when a system is out of control and does not think it is necessary to address partial failure of a system. If the system meets the definition of out of control as described above, then it is out of control and, during such period until the system is repaired, the recorded data shall not be used as described in § 63.8(c)(7)(ii).

Comment: Some commenters requested that paragraph 63.8(c)(7)(ii) be revised to state that the start of the out-of-control period is the time that the owner or operator determines the problem may exist and requests a maintenance check. The EPA should make the end of the out-of-control period the same hour that corrective action is complete, and require a minimum out-of-control period of 1 hour.

Response: The EPA believes that the suggested definition of the start of the out-of-control period would be ambiguous. In order to adopt such an approach, the Agency would need to develop standard procedures to ensure that records are kept to verify when the owner or operator first "determines the problem may exist." The EPA does not wish to require additional recordkeeping requirements in this regard, and the Agency believes that the existing definitions for the start and finish of out-of-control periods is correctly specific and verifiable.

Comment: One commenter said that the words "or portion thereof" should be removed from § 63.8(c)(7)(ii) or clarified because it is well established that the entire audit or QC check must be performed to verify the unit is meeting appropriate standards.

Response: The commenter is correct, and § 63.8(c)(7)(ii) has been revised to delete the words "or portion thereof."

2.6.5 Quality Control Program

Comment: The EPA should not require owners or operators to retain superseded procedures for the monitoring quality

control program. If old, outdated procedures are in existence, they create a possibility that they could be accidentally followed.

Response: As discussed in section 2.4.8, the EPA has determined that the availability of these types of records is essential from an enforcement perspective for providing a history of compliance. However, in order to be consistent with the recordkeeping retention requirements in § 63.6(e)(3), § 63.8(d)(3) has been revised to clarify that only the current version of the quality control plan must always be retained on-site and be available for review upon request. Previous versions of the plan must be retained for 5 years. However, superseded procedures may be retained away from the work area as long as they can be made available for inspection, upon request.

2.6.6 Performance Evaluation of CMS

Comment: One commenter had several comments regarding § 63.8(e), performance evaluation of continuous monitoring systems. First, the commenter said that the simultaneous submittal of source performance test and CMS performance evaluation test plans is unnecessary and may place a burden on the source. The commenter suggested that as long as clear requirements for CEMS certification and submission of test protocols are established, then the test plans should be allowed to be submitted independently.

Second, the language in §§ 63.8(e)(3)(iii) and (e)(2) appears to be redundant.

Finally, the commenter questioned whether it is the EPA's intent to establish separate relative accuracy requirements for specific part 63 standards or to refer to part 60, appendices B and F.

Response: The requirements of this section have been revised in the final rule. Neither the site-specific performance test plan nor the CMS performance evaluation test plan is required to be submitted for review, except upon

request by the Administrator. Therefore, the burden upon sources and reviewing agencies will be minimal. With regard to the commenter's second concern, redundancies between §§ 63.8(e)(3)(iii) and (e)(2) have been eliminated as a result of revisions made to the rule. Finally, the EPA will define applicable CMS performance specifications within each regulation as outlined in the regulatory revisions discussed earlier. These may or may not be taken from other parts of the CFR.

2.6.7 Alternative Monitoring Method

Comment: One commenter suggested that § 63.8(f), use of an alternative monitoring method, be revised to recognize that sources that are affected sources only because of a lesser quantity threshold generally should qualify for use of an alternative monitoring method.

Response: The Administrator may establish lesser quantity cutoffs for certain HAP based on health considerations. In these cases, a source will be regulated as a major source even though it emits less than 10 (or 25) tons per year if it emits (or has the potential to emit) at least the lesser quantity of a pollutant for which a lesser quantity cutoff has been established. Monitoring to ensure compliance with these sources is just as essential as for any other major source. Furthermore, this comment should be made during the public comment period when a particular NESHAP is proposed so that alternative monitoring may be considered. Therefore, this change has not been made in the final General Provisions.

Comment: According to one commenter, the EPA should not specify in § 63.8(f)(3) that the results of a standard method always prevail over the results of monitoring by an approved alternative monitoring method when the EPA disputes the results produced by an alternative method. There may be times when the standard method is clearly incapable of detecting the HAP of concern or the standard method is known to overestimate the concentration of HAP due to the method's inability to

exclude interferences. In these cases, the method that provides the most reliable results should prevail rather than the automatic acceptance of possibly unreliable results due to a blanket rule.

Response: The delegated authority must know all of the specific requirements that affect the sources within its areas of responsibility in order to meet its charge of ensuring compliance with the regulations. Therefore, in the event the delegated authority finds reasonable grounds to dispute the results obtained by an alternative method, the delegated authority may require the use of a method, requirement, or procedure specified in this section or in the relevant standard.

This provision was intentionally included in the rule to allow the delegated authority the ability to review monitoring results and make case-specific determinations of the adequacy of the data. Any source using an alternative should be in close contact with the delegated authority to discuss the details and results, particularly if a source believes that the authority's dispute of the results is incorrect.

Results of control, testing, and monitoring requirements are of particular importance, and any results that are suspect must be closely scrutinized so that national consistency may be maintained. Also, alternatives yielding suspect data must be evaluated, with respect to their availability for use by other sources within the same regulated source category.

Comment: One commenter said that § 63.8(f)(4) should be revised to allow conversion to an alternative monitoring method at any time with Administrator approval.

Response: Section 63.8(f)(4) allows the source to submit an application requesting the use of an alternative monitoring method at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. In the event the alternative monitoring method is to be used to demonstrate compliance with a relevant

standard, either in conjunction with a performance test or not, the application must be submitted within the timeframe specified in § 63.8(f)(4)(i).

The Administrator believes that if an owner or operator intends to use an alternative monitoring method for an affected source to demonstrate compliance then it should be used during a required performance test or from the initial startup or compliance date. Then, subsequent monitoring of the affected source, with continued use of the alternative monitoring method, will allow subsequent results to be comparable to the initial monitoring. However, in order to clarify the requirement regarding the ability of the owner or operator to request a change in method, § 63.8(f)(5)(iii) has been revised as follows:

If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by § 63.8(f).

Comment: One commenter requested that the EPA specify a time period (at least 30 days) for a source to submit additional information for a request to use an alternative monitoring method in § 63.8(f)(5)(i)(B).

Response: The time given to a source for submitting additional information to support an alternative proposal is determined by the nature of the information. This time period was intentionally left to the delegated authority for case-specific determinations. Any source proposing an alternative should be in close contact with the enforcement authorities to discuss details and agreeable time periods, particularly if a source believes that the time periods allotted were insufficient.

Comment: One commenter suggested that § 63.8(f)(5)(iii) should not limit sources from switching from an approved alternative monitoring method, back to the standard method,

without seeking prior approval.

Response: The delegated enforcement authority must know all of the specific requirements that affect the sources within its areas of responsibility in order to meet its charge of ensuring compliance with the regulations. Therefore, changes to the applicable requirements must be made with the approval of, or notification to, the delegated authority. Control, testing, and monitoring requirements are of particular importance, and any alternative or changes in these requirements and standards must have prior approval. Changes to such fundamental requirements must have prior approval, including a determination of equivalence with the promulgated standard, so that national consistency may be maintained and so that the alternatives can be made available to other sources within the same regulated source category.

2.6.8 Alternative Relative Accuracy Test

Comment: One commenter said that the EPA should allow the alternative relative accuracy test, regardless of whether a monitoring system is used directly to determine compliance, and the last sentence of paragraph 63.8(f)(6)(i) should be deleted.

Response: The Agency does not agree with the commenter. The Agency provided for the source to request the use of the alternative to the relative accuracy test in the event emission rates less than 50 percent of the relevant standard were demonstrated. While it is true that the alternative to the relative accuracy test is simpler and less rigorous, it may not be as accurate. Therefore, the Agency believes it is in the best interest of the owner or operator and the public well being for the requirements for use of the alternative relative accuracy test to remain as originally written.

Comment: One commenter stated that Performance Specification 2 in appendix B of 40 CFR part 60 is cited in § 63.8(f)(6) as the basis by which alternative relative accuracy test methods are to be judged. There is a problem in

that the test is limited to situations where a source is subject to emission limits. However, many sources, such as those affected by the Hazardous Organic NESHAP (HON), are subject to HAP removal limits or engineering controls. These sources are apparently left without an alternative method. The commenter suggested that the EPA should propose and receive comments on a relative accuracy test for part 63 monitoring requirements and use the HON monitoring requirements as an example.

Response: As discussed in other responses to comments, the revisions to the General Provisions regulation clarifying how performance specifications will be defined on a regulation-specific basis resolves this issue.

2.6.9 Averaging Period

Comment: One commenter said that, in the General Provisions, the EPA should allow monitoring systems that take continuous measurements and calculate 3-hour and 24-hour averages. Also, according to another commenter, the opacity averaging periods in parts 60 and 63 are not consistent. The EPA should use one averaging scheme in all opacity methodologies--a 6-minute, 15-second average for all regulations.

Response: The EPA believes that the commenter is referring to a provision contained in the HON, which was proposed on December 31, 1992 (57 FR 62690), that a CMS may report a constant output (called "compressed data") until a significant change in the emissions occurs. In this case, the CMS may go as long as 3 hours or 24 hours with one data value depending on the specific regulation. This is not the same as a 3-hour or 24-hour average, nor is it something that the EPA believes is appropriate to include in the General Provisions. It should be noted that more specific monitoring provisions will be established for each individual regulation, and the type of monitoring discussed by the commenter could be adopted within an individual regulation.

The requirements for COMS in part 60 and those in part 63 are consistent for COMS. The EPA believes that the commenter is referring to the requirement in Method 9 in subpart A of part 60 (visible emissions observer) for 15-second readings and Performance Specification 1 for at least six readings per minute or 10-second readings. These two measuring procedures represent different technologies and are applied differently. Such differences are common in test methods (e.g, the extractive, cumulative, 20-minute SO₂ sample collected for Method 6 versus the 10 to 15-second readings for a 20-minute SO₂ average as collected by Method 6C). In some cases, the methods are applied to the same standard, but in most, different methods are applied with different purposes, averaging times, and calculations. The applicable regulation will specify which method is to be used. The EPA also has recently proposed Methods 203A, B, and C, which provide visible emission observer procedures for a range of averaging times and calculations.

Comment: One commenter said that § 63.10(b)(2)(vii), which requires monitoring data to be kept in 15-minute averages, should be consistent with other sections of the rule and refer to 1-hour averages.

Response: Section 63.10(b)(2)(vii) is correct as proposed, and the Agency intends for the General Provisions to establish a requirement for 15-minute averages. This requirement may be overridden in the individual standards if source-specific characteristics indicate that a different averaging period is more appropriate.

2.7 NOTIFICATION REQUIREMENTS

2.7.1 Organization of Notification Requirements

Comment: Commenters suggested that an early cross-reference in § 63.5, Construction and reconstruction, to the notification procedures in § 63.9 would help clarify what area sources must do.

Response: The Agency is trying to keep duplication in the General Provisions to a minimum, and thus, the suggested revisions to § 63.5 have not been incorporated into the final rule.

Comment: Some commenters said that all notification requirements should be contained within a single notification section. In addition, the EPA should add language to § 63.9 that all notification requirements are contained in this section and that compliance with § 63.9 results in compliance with all notification requirements. The same comment was made regarding § 63.10, recordkeeping and reporting requirements.

Response: While the majority of notifications and recordkeeping and reporting requirements are found in §§ 63.9 and 63.10, respectively, other sections of the General Provisions include notification and reporting requirements relevant to these sections. The General Provisions are often referenced for specific sections that apply to an individual subpart and situation when the other provisions may not be applicable or relevant. The Agency believes that including the associated notifications and reports together with the relevant sections would minimize cross-referencing and make the provisions more user-friendly. Therefore, the proposed "Notifications" and "Recordkeeping and reporting" sections of the General Provisions are not totally inclusive of all records, reports, or notifications that may be required of an affected source. In addition, individual subparts may contain additional notification, recordkeeping, and reporting requirements.

2.7.2 Initial Notification

Comment: Some commenters requested that requirements currently found in paragraphs 63.9(b)(2)(iv) and (b)(2)(v) be revised to clarify that the required information is only for the "affected" source.

Response: The EPA has determined that it is not necessary to revise the rule in response to this comment, as

paragraph (b) clearly states that the requirements of (b) only apply to affected sources. In the final rule, the requirements of paragraphs (b)(2)(v) through (b)(2)(ix) have been relocated to § 63.9(h) of the rule, Notification of compliance status.

Comment: Some commenters stated that once a source has satisfied the permitting authority that it is an area source under part 70, it should not be required to continually submit notifications that it is an area source whenever a new MACT standard becomes effective that would affect the source if it were major.

Response: Only area sources affected by a part 63 standard would be required to submit an initial notification. Unaffected area sources are not subject to the notification requirements in § 63.9(b). Unaffected area sources that subsequently become affected major sources are covered by the provisions of § 63.9(b)(1)(i).

Comment: Sources subject to a relevant standard should be required to initially notify States, even if an approved operating permit program is not in place. The construction or operating permit application procedure should serve as notice.

Response: States will receive all notifications required under the General Provisions as soon as they have been delegated the authority to implement the General Provisions. This delegation may take place under subpart E of part 63 before the State's part 70 permit program is approved. However, the provisions of § 63.5(d)(1) and § 63.9(b)(1)(i) have been changed to waive the requirement for an additional initial notification from part 63 affected sources that have submitted a preconstruction review application.

Comment: One commenter was concerned that agencies will not have a systematic mechanism for checking and confirming negative determinations that are close to the major source threshold. The commenter recommended that the EPA establish an initial notification cutoff that is less than the part 63

cutoff for sources that are unaffected because they are not major (e.g., 50 percent of the major source cutoff). This approach is particularly needed for those sources that might be considered major sources if not for the existence of federally enforceable limits on their potential to emit HAP and others that could become part 63 major sources at some point in the future.

Alternatively, when a source can determine that it will be able to comply with a particular standard at the time of its initial notification, the need to also perform the major source determination is unnecessary.

Response: In § 63.9(b)(2) of the final rule, a source is no longer required to submit a major source determination with the initial notification; rather, the source is simply required to submit a statement saying whether the source is a major source. In addition, sources that determine they are not affected by a given standard are required to maintain documentation on file regarding their determination of status per § 63.10(b)(3).

In response to the comment regarding making delegated agencies responsible for identifying affected and unaffected sources, the EPA believes that State and local authorities do not have the resources to definitively identify all affected sources without input from affected industries. Participation by the regulated community is encouraged by the Agency as part of its revised rulemaking philosophy. Industry has asked to be more responsible and accountable for their own actions rather than be accountable to authorities who may have less understanding of the specifics of their operations. Comments regarding the requirements for sources that are close to the major source threshold, particularly if they have federally enforceable limits on their potential to emit, are being addressed in a separate rulemaking being developed by the EPA.

Comment: Some commenters requested that § 63.9(b)(4) be revised to communicate how it differs from § 63.5(d),

application for approval of construction or reconstruction. As written, both sections appear to apply to the same types of sources.

Response: Section 63.9(b)(4) summarizes the notification requirements associated with constructed or reconstructed sources. Section 63.5(d) provides the detail to the affected sources on how to complete the various application procedures. No changes are needed in the final rule.

Comment: Some commenters believed that some notifications [e.g., those required by paragraphs 63.9(b)(4)(ii), (iii), and (iv)] could be combined to reduce the burden on sources.

Response: These events are separated in time by discrete actions and cannot be combined, at least in a generic sense. However, each of these notices is anticipated to involve minimal effort.

2.8 RECORDKEEPING AND REPORTING REQUIREMENTS

2.8.1 Reporting Schedules

Comment: A few commenters stated that requiring dual reporting schedules for a single source because of different requirements under parts 60 and 63, for example, does not seem reasonable. The General Provisions should provide a mechanism to reduce all reporting if a source qualifies on a compliance history basis, and efforts should be made to coordinate reporting and recordkeeping requirements between programs. Commenters made similar comments related to dual notifications required in § 63.9.

Response: The General Provisions already provide an opportunity for sources to work with their permitting agency to coordinate the submission of required notifications [§ 63.9(i)] and reports [§ 63.10(a)(7)], to reduce the frequency of excess emissions and continuous monitoring system performance reports [§ 63.10(e)(3)(ii)], and to request a waiver of recordkeeping or reporting requirements [§ 63.10(f)]. In addition, the Administrator will accept

copies of reports, notices, etc., developed to satisfy other reporting requirements so long as they contain all of the material required by the part 63 General Provisions.

Comment: The EPA should clarify in provisions related to the negotiation of deadlines and time periods that States with an approved permit program may be delegated the authority to negotiate.

Response: States may seek delegation of authority to implement and enforce either all or part of the standards and requirements promulgated under section 112. If the Administrator has approved a request under subpart E for delegation of authority to negotiate deadlines and time periods, then such authority would pass to the States.

Comment: One commenter questioned whether the public should be notified when a source and permitting authority have negotiated a schedule revision per § 63.10(a)(7).

Response: As the commenter noted, these schedule revisions are allowed to provide flexibility to coordinate reports required under part 63 with other Federal and State provisions. The schedule revisions should not result in any changes in a source's compliance status or emissions control programs. In addition, Federal rules do not require public notice after promulgation. As part of an individual State's implementation program, a State could develop a public notice system (computerized bulletin board for example), but the EPA does not believe it is necessary to prescribe any system of public notice as part of the General Provisions.

2.8.2 General Recordkeeping Requirements

Comment: Several comments were received on § 63.10(b)(1) related to the conditions for the retrieval of records, and one commenter requested the terms "readily available" and "expeditious retrieval" be defined in the final rule. Several other commenters suggested that sources be allowed to store records in all formats, including microfiche and magnetic tape.

Response: In response to these comments, the EPA has revised § 63.10(b)(1) to clarify that only the most recent 2 years' worth of data must be retained "on site." The previous 3 years' worth of data may be retained off site, so long as the records are "readily available" for "expeditious retrieval." As discussed in the proposal preamble, by "readily available" for "expeditious retrieval," the EPA means that records must be available immediately for records retained on site and within 2 days for records archived off site. The EPA does not believe it is necessary to define these terms in the final rule.

With regard to storage of these records, EPA agrees that there is no need to limit sources to the specified methods of storage. In the proposal, § 63.10(b)(1) allows sources to maintain records on microfilm, on a computer, or on computer floppy disks. However, there is no reason not to allow magnetic tape records or microfiche records. Therefore, the final rule, § 63.10(b)(1), has been revised to allow these other methods of recordation or storage so long as the information meets the retrieval requirements. If special requirements are appropriate for a particular category of sources, these requirements can be addressed in individual standards that override the General Provisions with regard to data storage and retrieval.

Comment: The EPA should revise § 63.10(b) to require "exception" recordkeeping to avoid onerous burdens. Commenters suggested that in the majority of cases that these data will only serve to show that procedures, measurements, etc. were being properly done. For example, the rule could be revised to limit recordkeeping to all required measurements "except that if the owner or operator establishes a system that will reliably identify and record any measurement which is outside limits or ranges established pursuant to that standard, the owner or operator may retain records of only those measurements." Alternatively, the requirements could be

revised to focus attention on "all specified" or "all data necessary."

One commenter said that the EPA must recognize that most HAP testing is performed by noncontinuous or manual sampling when evaluating electronic data retrieval systems. In most cases, the use of manual sampling will result in extensive paperwork, which makes reporting and recordkeeping a difficult task. Consequently, the EPA should acquire or develop expertise in the area of process control computer systems.

Response: The part 63 General Provisions do not preclude the use of data compression monitoring systems, which typically record a value only when a data value varies from previously recorded values by more than a set variance. Sources desiring to use these systems may submit a request to the Administrator or their permitting authority to monitor using data compression as an alternative monitoring method. Individual subparts under part 63 may include minimum criteria that data compression systems must satisfy. For example, the HON (see 57 FR 62608, December 31, 1992) includes specific criteria that a data compression system must meet in order to be used to establish compliance with the HON. However, it is not possible to provide general criteria for the use of data compression systems in the General Provisions.

The EPA disagrees with the commenters that the requirements in § 63.10(b)(2) are particularly onerous or unnecessary. Many of the records are critical to permitting agencies in building compliance records for affected sources. For example, records of proper maintenance of monitoring and control systems contain measurements necessary to determine the conditions of performance tests and performance evaluations, and they provide positive indication to inspectors that equipment is being properly operated and maintained for peak performance. In addition, many of these records are routinely maintained in the absence of these requirements. Therefore, § 63.10(b)(2) has not been revised

to limit recordkeeping to "exceptional" events.

2.8.3 Excess Emissions and CMS Performance Reports

Comment: Commenters questioned the need to include "excess emissions and continuous monitoring system performance reports" required by § 63.10(e)(3) in the General Provisions. The details of monitoring systems may vary significantly from source category to source category and are most appropriately addressed in the specific MACT standards. In addition, other means already exist to address concerns regarding excess emissions of HAP (such as the CERCLA and SARA reporting requirements).

Response: The EPA agrees that detailed monitoring provisions are more appropriately left to the individual MACT standards because of the potential variability between source categories and their respective MACT standards. However, the purpose of the § 63.10(e)(3) reports is to establish a minimal framework for the reporting of generic information that is essential to the enforcement of any of the MACT standards. As for the existence of alternative systems for the Agency to access to achieve section 112 compliance and enforcement objectives, the emergency response systems described by the commenter are generally concerned with releases in quantities and under conditions that may not be consistent with the reporting and compliance needs of the authorities delegated with enforcing the MACT standards. To the extent that other reporting mechanisms provide duplicate information, they can be used to satisfy the part 63 requirements.

Comment: One commenter believed that the more frequent reporting requirements of § 63.10(e)(3)(iv) should only apply to the emission points that failed to comply.

Response: The commenter is correct that the intent of the provision is that these reporting requirements only apply to emission points that failed to comply with the applicable provisions. Section 63.10(e)(3)(iv) has been revised to clarify this point.

Comment: Some commenters considered the provisions allowing the submission of summary reports for excess emissions and monitoring performance as discussed in §§ 63.10(e)(3)(vii) and (e)(3)(viii) as duplicative and unnecessary, while other commenters said that the reports have the potential of reducing regulatory burdens by recognizing that equipment cannot function perfectly 100 percent of the time.

Commenters requested that the EPA clarify that the 1 percent and 5 percent thresholds refer to the aggregate of exceedances or downtime, rather than each event separately. In addition, the 1 percent or 5 percent threshold should be applied to each emission point or monitoring device, per monitored emission or parameter. In addition, the requirement for omitting excess emission reports should be revised to allow omission if such exceedances are less than 5 percent of the total, which is roughly equivalent to an exceedance on the order of 1 hour per day. In addition, the CMS downtime reporting period should not include the time for QA/QC activities, and the threshold should be increased to 10 percent of the total operating time.

Response: The EPA believes that the summary reports, which contain requirements for less detailed data reporting are appropriate in circumstances where sources can demonstrate that "excess emissions" or "control system parameter exceedances" are insignificant, as defined by the threshold requirements. However, if in individual standards or at specific facilities, the Agency or permitting authority believes that more comprehensive data is needed in a particular instance or if more stringent thresholds are appropriate, these cases may override the General Provisions.

The EPA considered the comments related to the monitoring thresholds both as part of this rule and as a result of comments received on the HON. The Agency has received no detailed data demonstrating that the default thresholds are

not appropriate for purposes of the General Provisions. However, flexibility is provided because the source and regulatory authority may establish acceptable site-specific ranges through the operating permit or notification of compliance status. For example, a site-specific range could be ± 5 percent of the target value, if the source sufficiently justifies that such a range ensures proper operation of the control device, and the regulatory authority approves the range. In this case, if the measured value of the parameter is outside the agreed upon range more than 1 percent of the operating time, the regulatory authority could require quarterly reporting for that emission point.

The requirements are expressed as a percent of actual operating time instead of a specific number of hours in order to accommodate variability in operating time. The hour option would result in different stringencies for different processes.

The specific requirements for CMS downtime, including QA/QC activities, depend on the reporting and averaging periods specific to each regulation and will be addressed by establishing the applicable minimum data availability requirements in the individual subparts.

Comment: Some commenters made the following suggestions to revise the contents of the summary report:

1. Section 63.10(e)(3)(vi)(F) should be deleted because it is impossible to identify a manufacturer and model number of most monitoring systems.

2. The summary report on gaseous and opacity excess emission and continuous monitoring system performance does not discuss parametric monitoring in any relevant fashion. Several sections of the report contents should be described more broadly in order to cover parametric monitoring system reports.

3. The summary report contains several elements that are excessive or should not have to be repeated in each successive

report [e.g., (D), description of process unit; (E), limitations; (F), information on manufacturers and model numbers]. Sections (I) and (J) should be deleted, and the enhanced monitoring and compliance certification submittals should be referenced as sufficient submittals for purposes of the summary report.

Response:

1. The EPA disagrees that it is impossible (or even difficult) to identify the manufacturer and model number of most monitoring systems. In cases where a source does experience difficulty in providing this information, the source should discuss alternatives (such as a detailed description of the system) with the implementing agency.

2. Sections 63.10(e)(3)(vi)(I) and (J) have been revised to include data relevant to control system parameters.

3. Given the common use of word processing systems and electronic versions of reports, the repetition of certain summary report elements should not be a burden. These provisions are retained to ensure that each report stands alone as a compliance record. Sections 63.10(e)(3)(vi)(I) and (J) provide critical information in the summary reports and have been retained, with the modifications discussed above.

2.8.4 Miscellaneous Comments

Comment:

1. Commenters said that it is unclear whether the Administrator has the authority to allow owners or operators to exceed a 6-month interval for reporting when granting petitions to change the time period and frequency of reports under §§ 60.19(c) through (f). It is also unclear whether the Administrator's authority can be delegated in this case.

2. Commenters said that the language regarding the definition of "day" and the discussion of postmark deadlines in §§ 63.10(a)(8) through (10) duplicates the language in §§ 63.1(a)(10) through (12) and should be deleted.

Response:

1. The provisions of § 60.19(c) through (f) allow changes in reporting deadlines for purposes of coordinating compliance requirements with parts 61 and 63. As stated in § 60.19(d), such changes do not change the frequency of such reporting. If a State has requested delegation of authority to implement §§ 60.19(c) through (f), and such request has been approved by the Administrator, the State has authority to enter into such schedule amendment agreements with sources.

2. The EPA agrees with the commenters, and the final rule has been revised by deleting § 63.9(a)(5) through (7) and § 63.10(a)(8) through (10), which repeat the discussion of "day" and postmark deadlines presented in § 63.1(a)(10) through (12).

2.9 TIMELINE ISSUES

2.9.1 General Timing Issues

Comment: Some commenters suggested that all provisions related to timing should be placed in a single section in the preamble.

Response: While the EPA did compile reporting and recordkeeping and notification requirements into consolidated sections, a similar organizational redundancy for timing requirements would make the General Provisions considerably longer. Therefore, this suggestion was not adopted.

2.9.2 Compliance Provisions Deadlines

Comment: The commenter argues that several of the time periods specified in the proposed General Provisions for activities associated with responding to requests for additional information or notifications of intent to deny requests are unreasonably short. Specifically, the 15-day deadline in § 63.6(i)(12)(ii) and the 7-day deadline in §§ 63.6(i)(12)(iii)(B) and (i)(13)(iii)(B) are cited as unrealistic.

Response: The EPA agrees with the commenters, and has revised the rule accordingly. The 15-day period in § 63.6(i)(12)(ii) has been increased to 30 days, and the 7-day

deadline in §§ 63.6(i)(12)(iii)(B) and 63.6(i)(13)(iii)(B) has been increased to 15 days.

2.9.3 COMS Performance Specifications

Comment: One commenter said that the § 63.8(e)(4) requirement for COMS performance specifications test results to be available prior to a source's performance test requires more than 120 days after the compliance date.

Response: As discussed in the promulgation preamble, the source is now allowed up to 180 days to conduct the performance test and CMS performance evaluation, and § 63.8(e)(4) has been revised to be consistent with this milestone. Also, § 63.8(c)(3) has been revised to allow the data verified either prior to or in conjunction with conducting the performance test. Other changes made to timelines related to this provision should relieve the concerns of the commenter. For example, because site-specific performance evaluation test plans must only be submitted at the Administrator's request, in most cases the time allotted for review and approval of the plan will not be needed.

2.9.4 Schedule Revisions

Comment: The EPA should allow mutually agreed upon changes to schedules such as those allowed under §§ 60.19(d), 61.10(h) and (i), and 63.9(i)(2) to stand for a reasonable period rather than requiring a new request for each event. For sources with an operating permit, it would be appropriate for the permit to contain standing schedule adjustments such as report due dates; mutually acceptable changes should be allowed as administrative amendments.

Response: The Administrator does not believe that any changes are needed to the language in the General Provisions. The language in § 63.9(i)(2), for example, which requires an owner or operator to request an adjustment each time he or she wishes to change an applicable time period or postmark, is consistent with the intent of the commenter. Once an adjustment is agreed to, it will be valid until the schedule

is revised again upon mutual agreement. As provided in § 63.9(j), any change in the information already provided related to the scheduling agreement must be updated within 15 calendar days after the change.

The commenter is correct that the operating permit is an appropriate means of recording schedule dates.

2.10 CONTROL DEVICE REQUIREMENTS

2.10.2 Flares

Comment: The minimum heating value and maximum exit velocity requirements in § 63.11 are based on streams that derive their heat value totally from hydrocarbons. Due to inherent molecular properties of hydrogen, combustion of a hydrogen-rich stream in a flare can result in a stable flame (and greater than 98 percent destruction efficiency) at heating values less than, and exit velocities greater than, the limitations in § 63.11. Therefore, several commenters indicated that § 63.11 should be modified to increase flexibility for flares that derive a substantial portion of their heat release from hydrogen. One commenter suggested that provisions be added to § 63.11(b) that would allow a demonstration by engineering calculations or test data that the flare is operating to achieve 98 percent destruction efficiency.

Response: The EPA is aware of the differences between flares that burn hydrogen-rich streams and those that burn hydrocarbons. However, sufficient information has not been provided to allow the EPA to set general performance criteria for hydrogen flares in § 63.11 that will assure that the flare destroy 98 percent or more of organic HAP contained in the gas stream.

The EPA believes the addition of paragraph(s) to § 63.11 that allow demonstrations of flame stability and/or destruction efficiency by engineering calculations or test data is inappropriate. Such provisions would be applicable to many situations other than those associated with hydrogen

flares. The performance standards contained in § 63.11(b) are based on an extensive testing program conducted under controlled conditions. Allowing the use of general "engineering calculations or test data" could result in the approval of flares that are not equal to those complying with § 63.11(b).

However, information of this type can be used to obtain an "equivalency determination" in accordance with part 63, paragraph 63.6(g). This paragraph provides the opportunity for an alternative emission standard to be approved by the EPA. Upon receipt of a request for an alternative standard, the EPA will work closely with the State and/or local agency to review the technical information provided by the requestor and determine whether the proposed standard is "equivalent." The results of this equivalency determination are published in the Federal Register and are subject to public review and comment. In the case of flare performance, the EPA believes that this is the appropriate means of allowing flares that do not meet the performance requirements of § 63.11(b).

It should be noted that the EPA believes that 98 percent destruction can be obtained if the flare gas contains a sufficient amount of hydrogen, even when the gas stream does not meet the minimum heating value and maximum exit velocity requirements of § 63.11(b). As correctly pointed out by one commenter, the EPA has approved an equivalency determination for a hydrogen flare under § 60.484(a).

Comment: Engineering calculation or equivalent determination should be acceptable alternatives to determine the concentration of stream components (for the heating value determination) and velocity of the air stream being combusted. The determination of organic sample component concentrations should be allowed by applicable non-gas chromatograph methods other than Method 18, and hydrogen and carbon monoxide by other applicable methods.

Response: Alternative test methods may be used in lieu

of those cited in § 63.11. Requests for the use of alternative procedures should be made in accordance with the procedures contained in § 63.7(f).

Comment: Section 63.11(b)(5) requires that flares be operated with a pilot flame present at all times. Auto-ignition flare systems should also be allowed.

Response: The EPA believes that the presence of a pilot flame at all times is essential to ensure proper performance of the flare. Technical information has not been provided to the EPA that supports a conclusion that auto-ignition flare systems operate as effectively as those with a continuous pilot flame. However, an equivalency determination may be requested in accordance with § 63.6(g), use of an alternative non-opacity emission standard, to allow the use of an auto-ignition flare.

Comment: The "no visible emissions" requirement needs to be more specific on how Method 22 is applied. The commenter noted that, in one instance, one of their plants was required to monitor the opacity daily to demonstrate continuous compliance with this provision.

Response: Section 63.11(b)(4) states that "Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours." This requirement was intended to provide a practical method for occasional observation. While this paragraph does not state the frequency that Method 22 must be applied, the EPA certainly did not intend for facilities to continuously, or even daily, monitor the flare to comply with the no visible emissions requirement.

2.10.1 Applicability

Comment: The EPA should expand § 63.11 to include general requirements for control devices other than flares.

Response: There is one particularly unique aspect of flares in relation to other control device, which is that flares cannot be tested. Performance requirements for other

control devices will be included in individual standards, and will typically include performance testing requirements. However, as there are limited ways to demonstrate flare performance, requirements for flares are included in the General Provisions, and these will be referenced in the individual standards.

Comment: The application of the extensive monitoring requirements in § 63.8 could make compliance with § 63.11 difficult. The EPA should clarify the interaction of §§ 63.8 and 63.11.

Response: As noted above, the EPA believes that it is most important that the pilot flame be lit at all times. Section 63.11(b)(5) requires that the presence of a flare pilot flame be monitored "using a thermocouple or any other equivalent device to detect the presence of a flame." This is the only specific monitoring requirement in § 63.11(b). In addition, § 63.11(b)(1) states that owners or operators using a flare must monitor the flare to assure that it is operated and maintained according to its design, and that specific subparts will provide more specific monitoring provisions. Section 63.11 addresses continuous emission monitoring and would not apply to flares. This language has been added to § 63.8(b)(1) to clarify this point.

Comment: The first sentence of § 63.11(b)(8) should be eliminated to make it consistent with § 60.18(f)(6).

Response: While the requirements of § 63.11(b) are identical to those contained in § 60.18(b), there have been slight modifications to clarify the requirements. Paragraph 63.11(b)(8) is a combination of paragraphs 60.18(c)(5) and 60.18(f)(6).

However, there was an error in § 63.11(b)(8) as proposed. The clause "as determined by the method specified in paragraph (b)(7)(iii) of this section," should not have been included, because the method for determining V_{\max} for air-assisted flares

is contained in paragraph 63.11(b)(8). Therefore, this clause has been removed from the regulation.

Comment: In § 63.11(b)(6), "ppm" should be "ppmv."

Response: The EPA agrees with the commenter, and the regulation has been changed as noted.

Comment: Section 63.11(b)(7)(i) should be modified as follows: "by dividing by the volumetric flow of gas being combusted."

Response: The EPA agrees with the commenter, and the regulation has been changed as noted.

Comment: Because the flare requirements are identical to § 60.18, § 63.11 should be deleted and reference simply made to § 60.18.

Response: The EPA believes that it is appropriate to have the flare requirements contained within part 63.

2.11 TITLE V PERMIT ISSUES

Comment: Several commenters argued that compliance with a title V permit should constitute compliance with all of a source's requirements under the Act. These commenters contended that the purpose of the title V operating permit is to collect in a single document all of a source's Clean Air Act obligations, and that the provisions of proposed § 63.4(a)(5), which require a source to comply with an applicable standard regardless of the existence of a permit, or any conditions specified therein, impose an excessive burden on industry. Instead, all requirements of the Act should be consolidated in the operating permit, and any change to applicable regulations that affects a source's ability to comply should be incorporated and become effective in the next amendment or revision of the permit.

Another commenter requested that the relationship between the permit shield provisions and the severability clause of § 63.4(c) be clarified. This commenter stated that the title V operating permit regulations mandate the incorporation of all applicable requirements into a source's operating permit;

however, the severability language of § 63.4(c) raises the question of whether the operating permit is sufficient for compliance enforcement.

Response: Requirements established under section 112 of the Act are "underlying applicable requirements," and the EPA has the authority to enforce these independently of the permit. Furthermore, some sources regulated under section 112 may not be required to obtain a title V permit, or this obligation may be deferred. Nevertheless, these sources are still subject to the section 112 requirements.

The only time that section 112 requirements may not be enforced independently is when an explicit permit shield addresses them. Under 40 CFR 70.6(f), the permitting authority may include a provision in a permit stating that compliance with the permit shall constitute compliance with any applicable requirements as of the date of permit issuance. This shield is dependent upon certain conditions. Specifically, the permitting authority may include a shield provided that:

- (i) Such applicable requirements are included and are specifically identified in the permit; or

- (ii) The permitting authority...determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

A part 70 permit that does not explicitly state that a permit shield exists does not provide such a shield. The permit shield does not alter the liability of an owner or operator for any violation of applicable requirements prior to or at the time of permit issuance. Furthermore, the permit regulation requires that a permit be reopened and revised if additional requirements under the Act become applicable to a major source (under part 70) with more than 3 years remaining in its permit term. If a standard is promulgated during the last 3 years of a permit term for a major source, the permit does not have to reopen before renewal to incorporate the new

requirements. However, the source is still required to comply with the standard, and a new source is subject to the standard upon its promulgation or upon startup of the source. Thus, a permit shield may be provided under certain circumstances, but a source will not be shielded automatically from compliance with all requirements promulgated during a permit term.

The severability clause of § 63.4(c) states that the provisions of part 63 are federally enforceable, notwithstanding any requirements incorporated into a source's operating permit. Clearly, the intent is that a source's operating permit will contain all applicable requirements for a source. When an operating permit is complete in this respect, a permitting authority may provide a permit shield to the source, precluding enforcement under any other applicable requirement. However, without this shield, part 63 requirements are independently enforceable by the Administrator.

Comment: Two commenters stated that the EPA should not write rules in the General Provisions that cover situations where no operating permit program is operable. If no program is operable, owners and operators will be unable to get timely and accurate information, and they should not be subject to these rules and the possibility of citizen suits. One commenter requested that part 63 requirements not become effective until a State has a fully approved permitting program. This commenter said that a State's resources are best used to obtain approval of their permitting program and issue the majority of permits.

Response: The EPA does not have the discretion to delay the effective date for part 63 requirements until the approval of State title V permit programs. Congress established the effective date for part 63 requirements in section 112 of the Act, including the schedule for promulgation of emission standards for source categories and compliance dates for new and existing sources. Some of these dates have already

occurred (e.g., the coke ovens MACT standard, promulgated at 58 FR 57911, October 27, 1993), and others will occur in the near future (e.g., the hazardous organic NESHAP (HON), which is under a court order to be promulgated no later than February 28, 1994).

Comment: Some commenters were concerned about when the General Provisions require sources to comply with permitting requirements. One commenter said that the proposed General Provisions may prematurely require an owner or operator to obtain a permit. Specifically, as § 70.3(a)(3) of the operating permit rule requires permitting for "any source...subject to a standard or other requirement under section 112...", and the proposed General Provisions are applicable (unless superseded) under § 63.1(b) to all regulated sources in a listed category of sources, this commenter is concerned that a title V permitting obligation could be triggered prematurely.

Another commenter said that the proposed rule conflicts with the title V permit program. This commenter claimed that the proposed General Provisions are inconsistent and incorrect with respect to who must obtain a permit, and the final rule should be revised to indicate that a source is not required to obtain a permit until a MACT standard applies to the source.

Response: The final General Provisions have been revised to remove rule language that may be read to require sources to obtain a permit when it is inappropriate to do so. This language was intended to trigger the application for a permit or a permit revision by an owner or operator, if required under section 112 or part 70. Requirements specifying who must obtain a permit will be implemented consistent with part 70. Section 63.1(b) in the final rule has been revised to clarify that applicability of part 63 is triggered when a source emits (or has the potential to emit) any HAP and is subject to a requirement under part 63. This revision of the rule removes specific concerns about early triggering of

permitting requirements by not tying the requirement to obtain a permit solely to being part of a listed category of sources.

Under § 70.3(b)(2), the EPA must decide in individual rulemakings what the permitting requirements will be for area sources that are regulated by emission standards under section 112. Section 63.1(c)(2) of the proposed General Provisions stated that part 63 NESHAP will determine whether area sources affected by those NESHAP would not be required to obtain a title V permit. If individual NESHAP do not make such a finding, affected area sources would be required to obtain a permit, because they are an area source subject to a section 112 requirement [see § 70.3(a)(3)].

Section 63.1(c)(2) of the final General Provisions has been revised to further clarify that part 63 NESHAP also will decide whether State permitting authorities will be required to permit area sources affected by those standards immediately, despite the deferral option offered to States for area sources in § 70.3(b)(1) (i.e., in such a case, part 63 would not allow a deferral for that category of area sources).

With respect to the suggestion that the rule be revised to indicate that a source is not required to obtain a permit until it is subject to a MACT standard, § 70.3(a)(1) of the permit rule requires major sources to apply for a permit within 12 months of becoming subject to the permit program [see § 70.5(a)(1)], even if the source is not yet subject to a standard developed under section 112. Thus, the suggested revision is not consistent with part 70, and the final rule has not been changed in this respect.

Comment: One commenter suggested that paragraph (a)(2) of § 63.5 be deleted, as permitting requirements are in the part 70 rule, and it is not clear whether this paragraph alters those requirements. The commenter was particularly confused about what requirement this paragraph would impose on sources affected by the Industrial Process Cooling Towers regulation.

Response: The EPA agrees that § 63.5(a)(2) as proposed is unnecessary and potentially confusing, and it has been deleted from the final rule.

Comment: Several commenters expressed concern about the consistency of part 63 reporting requirements with part 70 requirements. One commenter stated that the EPA needs to review the consistency of part 63 with part 70. This commenter said that all requirements established under the Act must be consistent with part 70 requirements to ensure Federal enforceability. Another commenter said that facilities subject to permitting requirements and the General Provisions should have only one set of reporting, recordkeeping, monitoring, and compliance certification requirements.

Response: Although the EPA attempted to make the requirements of part 63 consistent with those promulgated in part 70, the Agency is not under a statutory obligation to do so. Section 112 of the Act imposes statutory mandates that have a different purpose from those in title V, and the EPA may develop compliance and enforcement mechanisms to implement section 112 that are different from those in the permit program. Requirements established pursuant to section 112 are independently federally enforceable, and they do not require title V to be enforced. The General Provisions are one source of the "underlying applicable requirements" that will constitute some of the requirements in the operating permit.

Comment: One commenter stated that the provision to request a reduction from quarterly reporting to semiannual reporting conflicts with title V requirements, which would designate a reduction in reporting frequency as a Significant Permit Revision. Such a modification has extensive requirements, including a potential 18-month review period and public review and hearings. Thus, the commenter suggested that reporting frequency be semiannual initially, and increased to quarterly if noncompliance results.

Another commenter was specifically concerned that making

changes to § 60.7(e)(2) could conflict with a source's operating permit. This commenter argued that, as individual standards allow public comment, an overly burdensome recordkeeping requirement should be changed in the rule at that time, instead of doing case-by-case relaxations as allowed under the proposed amendments to the part 60 General Provisions.

Response: The provision for allowing a source to reduce the frequency of reporting from quarterly to semiannual under the General Provisions [see § 63.10(e)(3)] extends flexibility only to the applicable section 112 requirement, and it would not extend to all reporting requirements in the part 70 permit. The source's operating permit, however, must include terms and conditions in advance in order to allow such flexibility without triggering the requirement for a Significant Permit Revision. In this way, the source would be in compliance with both the underlying applicable requirement and the terms and conditions of the permit.

The changes to § 60.7(e)(2) referred to by the commenter establish provisions for reducing the frequency of reporting from quarterly to semiannual. As previously discussed, such a change in reporting schedule should not be in conflict with the source's operating permit if the permit includes terms and conditions to allow such flexibility. Existing State permits regulating sources under part 60 may have to be revised to accommodate this flexibility. Alternatively, a State could choose to deny the source's request to reduce its reporting frequency. Nonetheless, new operating permits issued pursuant to the part 70 regulation should be written to incorporate such flexibility.

During the development of individual standards, the Agency will consider reducing the frequency of reporting requirements in the rules themselves, rather than reducing the frequency on a case-by-case basis, as the commenter suggested. However, the EPA is constrained by the need to obtain

information from sources on a timely basis to assess continual compliance with emission standards and other requirements. Furthermore, the provisions allowing owners or operators to reduce the frequency of reporting was designed as an incentive to reward good performance by individual owners or operators, and a general reduction in reporting frequency may not be appropriate in individual standards.

Comment: The commenter states that the General Provisions should only require sources to "apply for" a permit, as the issuance of permits is not governed by the General Provisions. Consequently, §§ 63.1(c)(2) and (e) should be revised to delete the requirement for a source to "obtain" a permit.

Response: Section 63.1(c)(2) of the General Provisions states that the owner or operator of an affected source "may be required to obtain" a part 70 permit. This language appropriately describes provisions that may apply to a source, and it does not address the issuance of such permits. This paragraph also states that emission standards under part 63 will specify whether the owner or operator of an affected area source is required to obtain a permit. This language follows the directive in § 70.3(b)(2) that says:

In the case of nonmajor sources subject to a standard or other requirement under...section 112 of the Act after July 21, 1992, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated.

Finally, § 63.1(e) has been revised where appropriate to indicate that if an owner or operator is required to obtain or revise a title V permit, he or she shall apply to obtain or revise such a permit in accordance with the permit program regulations.

Comment: The commenter believes that the requirement for area sources subject to a generally available control technology (GACT) standard to obtain a title V permit would be

overly burdensome to both the Administrator and the affected source. Applicable monitoring and recordkeeping requirements for such a source would be required in the relevant GACT standard, and further requirements in a permit would be unlikely. Thus, the requirement to obtain such a permit would convey no air quality benefits.

Response: The EPA disagrees with this comment. The Agency believes that the requirement for an area source to obtain a permit may indeed incur an air quality benefit by providing added incentive for the source to comply. Further, it will provide increased enforcement effectiveness for the Agency and citizens because of readily available access to consolidated information on a source's compliance requirements. Finally, it is possible that an area source affected by a GACT standard could be subject to other requirements under the Act as well. These requirements also would be incorporated into the source's title V permit. As stated in § 70.3(b)(2) of the permit regulation, and in § 63.1(c)(2) of the General Provisions, the Administrator will address the question of the permitting burden each time a NESHAP that affects area sources is promulgated.

Comment: The commenter states that the proposed reporting provisions for reporting deviations from the startup, shutdown and malfunction plan are not consistent with title V reporting requirements. The proposed General Provisions required that sources report deviations from procedures verbally within 24 hours, and by letter within 7 days. Part 70 emergency provisions, in contrast, require reporting within 2 working days, and there is no 24-hour reporting period.

Response: As discussed in the promulgation preamble, §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) have been revised to require reporting of actions inconsistent with the startup, shutdown, and malfunction plan within 2 working days, which allows this aspect of the General Provisions to be consistent

with the emergency provisions in part 70. Furthermore, the General Provisions allow owners or operators to make alternative reporting arrangements, in advance of an emergency event, with the EPA or the delegated State authority [see § 63.6(e)(3)(iv)].

Comment: One commenter stated that the final General Provisions should require that sources seeking to escape applicability because of federally enforceable controls undergo permitting in which the State must make findings that controls included in title V permits appropriately limit the sources' potential to emit. The commenter also said that the final rule should state that the owner or operator must agree not to subject any controls limiting the potential to emit to minor permit amendment or change.

Response: Individual requirements will be developed for sources by the appropriate enforcement authority consistent with the Agency's rules and guidance on limiting potential to emit. Existing Agency regulations require that, to limit a source's potential to emit, the limitations must be federally enforceable, and existing Agency guidance specifies that, to be federally enforceable, limitations must be practicably enforceable. The Agency intends to seek further comment on this topic through a forthcoming rulemaking that addresses potential to emit issues for the air toxics program. The requirements for how part 70 permits must be changed to incorporate changes to a source's potential to emit will be determined in accordance with part 70 and applicable State regulations.

2.12 MISCELLANEOUS

2.12.1 Source Category List (Deletions and Additions)

Comment: One commenter noted that as proposed, source category delisting may only occur during the MACT standard setting process, and then only when initiated by the EPA. The commenter believes that this approach fails to recognize that under section 112(j) of the Act, a source may undertake the

required MACT determination when a MACT deadline established under section 112(e) is missed by more than 18 months. Consequently, a source may undertake MACT determination and implementation, only to discover subsequently that the EPA intends to delist the source category. The commenter believes that the delisting process must be made more flexible and the potentially affected sources should be able to initiate a delisting petition at any time, not just during the standard development period.

Response: The EPA intends for delisting to be an option for the Agency, or any outside party (by petition), at any time. The EPA itself may choose to pursue deletion, data permitting, before or during the standard setting process to avoid setting an unnecessary standard. Similarly, industry may choose to submit a petition before or during the standard setting process, data permitting.

Comment: This commenter believes that, with regard to delisting source categories, the EPA must consider and reconcile differences between current Federal procedures and State risk assessment methodologies. This is critical because the ability of a source category to be removed from the list will depend upon the level of risk it presents.

Response: Decisions about whether to delist a source category from the list of source categories will be based upon reasonable, well-documented risk assessments, using appropriate methodologies, which include data to support the assumptions used. As such, it is not necessary to reconcile Federal methodologies with State and/or local methodologies.

Comment: This commenter believes that the EPA's approach to delisting source categories based upon risk in order to direct resources toward those source categories exceeding the risk criteria identified by Congress is contrary to Congress' intended approach of control technology regulations, followed by residual risk assessment and further regulation.

Response: The EPA considers its implementation of

section 112(c)(9)(B) to be consistent with Congress' intended regulatory approach. While it is true that section 112 requires the EPA to regulate source categories based upon existing methodologies to reduce emissions first, then assess residual risk, the Act also allows the EPA to remove a source category if the risk criteria in section 112(c)(9)(B) are met. The commenter also noted that the EPA should seek input from State and local agencies on deletion guidelines. The Agency concurs and will do so.

Comment: This commenter states that the EPA has an obligation to address emissions from area sources that may individually pose little risk but cumulatively account for 90 percent of the 30 most potent pollutants in urban areas [see section 112(c)(3) of the Act]. The commenter believes that delisting these sources may require subsequent reversal and may result in a great waste of resources.

Response: If the EPA makes a finding of adverse effect prior to listing categories of area sources under section 112(c)(3), it is unlikely that listed area sources would meet the deletion criteria of section 112(c)(9)(B). However, if the EPA receives a petition to delete a listed area source category, or if the Agency receives a petition to delete a major source category that also contains area sources, it plans to consider the implications to the urban area program and other aspects of section 112 [e.g., section 112(m), section 112(c)(6)] before delisting the category.

Comment: The commenter believes that focusing on delisting is a poor use of the EPA's resources, and that the EPA should not issue guidance or a notice of proposed rulemaking on delisting.

Response: While the EPA's resources are limited, the Agency believes it is important to issue guidance explaining the delisting process to assist parties who may wish to submit a petition.

Comment: The commenter believes that it is not appropriate to focus upon a single source within a nonuniform source category when initiating delisting petitions.

Response: The Agency intends to assess the human health and environmental impact of the entire source category in any delisting process the Agency may undertake. Where the source category is not technically uniform, the Agency may disaggregate the listed category into a series of more uniform categories.

Comment: The EPA should address adding categories to the Source Category List in the forthcoming guidance, as this is more likely to occur than delisting, because of the stringency of section 112(c)(9)(B).

Response: The EPA will not address listing source categories in the forthcoming guidance on source category deletion. The processes for listing major and area source categories are outlined in section 112, and, in future revisions of the list, the Agency will follow the procedures established during the development of the initial list of source categories. With regard to outside parties requesting additions to the list, any person may present the EPA with a rationale and documentation for listing major or area sources. The Agency will then determine whether to add a source category to the list.

Comment: With respect to delisting carcinogens, one-in-a-million lifetime risk should be used and the linearized multistage model should be used as a regulatory default.

Response: Section 112(c)(9)(B) of the Act requires the Agency to use a one-in-a-million lifetime risk when assessing carcinogens. Risk assessment methodologies used in the decision to delist a source category will be based upon the most appropriate models and assumptions for the pollutants in question. This may or may not result in the use of the linearized multistage model as a regulatory default.

Comment: This commenter believes that terms such as

"adequate to protect public health," "ample margin of safety," and "no adverse environmental effect" in section 112(c)(9)(B)(ii) of the Act need to be defined.

Response: The Agency concurs and intends to address these issues in the forthcoming guidance.

Comment: The commenter believes that the EPA should notify State and local agencies when a petition to delist a source category is initiated.

Response: The EPA intends to inform State and local agencies, the public, environmental groups, and industry of a petition to delist source categories by means of a Federal Register notice and by announcement on EPA bulletin boards.

2.12.2 HAP List

Comment: One commenter believes that a list of hazardous chemicals referred to in the proposed definition of "stationary source" should be included as an appendix to part 63. A second commenter believes that the list of HAP should be codified in subpart C to provide a single reference source for the HAP list and to facilitate modifications to the list.

Response: Eventually, the HAP list will be codified in full in part 63. The EPA is currently developing this list and working on needed technical corrections to the list. The Agency appreciates the commenter's concern about having a current and technically accurate list easily available to the public and sources. When the EPA has developed a technically correct list of HAP, the list will be proposed in the Federal Register, and the public will be given the opportunity to comment on the proposed list. After the Agency has responded to public comments on the proposal, a final list of HAP will be promulgated by the EPA.

Comment: A commenter also suggested that a mechanism should be provided to notify States of any requests made to modify the list, and that this mechanism could be achieved through notification to State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution

Control Officials (STAPPA/ALAPCO).

Response: The EPA appreciates the commenter's concern that States be given the opportunity to be closely involved in activity relating to the HAP list. Currently, there is extensive involvement by States on the work group responsible for the development of the list of HAP. States also have immediate access to information developed by the EPA that is available on the Agency's Bulletin Board System, which ensures their ability to remain aware of the most current developments regarding the list of HAP. The EPA believes that in the process of developing a list with State involvement on the work group, issues such as whether a notification mechanism should be established through STAPPA/ALAPCO will be resolved effectively.

Comment: A third commenter requested that the EPA issue guidance subject to notice and comment on substance-specific delisting, and that the guidance reflect a realistic opportunity to remove certain chemicals from the HAP list where their lack of significant adverse human or environmental effects, as emitted by pertinent source categories, is clear.

Response: Guidance on issues such as procedures for removing certain substances from the HAP list is forthcoming from the Agency. The EPA appreciates the public and sources' desire for greater information on how to facilitate this process. However, as the Act does not mandate the issuance of such guidance, the EPA will focus its attention on procedures for adding and deleting substances to and from the list as resources become available for the task.

2.12.3 Confidential Business Information

Comment: Several commenters voiced concern about the confidentiality of business information. These commenters stated that inadequate protection from disclosure of business information could have deleterious effects on a source's competitiveness. One commenter recommended that § 63.15(a)(1) be amended to reference 40 CFR 2 subpart B, which allows for

the confidentiality of business information. Another commenter felt that "trade secrets" are only a subset of confidential information, and limiting protection to trade secrets is insufficient. The commenter argued that existing EPA regulations already protect information beyond "trade secrets" from public disclosure. The commenter also states that the notification of compliance status is not listed in section 503(e) of the Act, and therefore should not be cited in § 63.15(a)(1). Finally, this commenter states that any records that are not required under title V, but are required under other portions of the Act, are entitled to protection for confidential information other than trade secrets.

Response: In response to the concern of the commenter asking that language be added to reference 40 CFR 2, the proposed General Provisions do reference part 2 of this chapter in § 63.15(a)(1). The EPA agrees with the commenters that the proposed provisions may inappropriately limit the confidentiality of business information submitted to the Agency. The Agency has accordingly revised the language in § 63.15 to clarify that all business information, whether it qualifies as trade secrets or not, will be protected consistent with 40 CFR part 2, subpart B. In the final rule, the first sentence of § 63.15(a)(1) has been revised to read as follows: "With the exception of information protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public."

2.12.4 Prohibited Activities and Circumvention

Comment: Several commenters object to the language used in § 63.4(a)(1), which states that a source may not operate in violation of the requirements of part 63 except under certain circumstances, including when it has been granted a compliance extension. The commenters argue that if a source has received a compliance extension, it is by definition not operating in violation of the relevant standard, and the General Provisions

should reflect this fact.

Response: The language of § 63.4(a) states that while a source should never operate in violation of a standard, compliance is excused when a source is granted a compliance extension or exemption. It should be noted that compliance extensions frequently excuse only compliance with equipment requirements while still requiring compliance with reporting, good air pollution control practices, and other provisions.

Comment: The EPA received several comments on the provisions in § 63.4 regarding the use of diluents. Two commenters argued that the use of diluents should not be strictly prohibited, as it may be warranted for safety reasons under certain circumstances. One commenter believes that although the proposed language conveys the concept of "intent," practical applications may result in confusion. Specifically, the commenter believes that unless the issue of adding inert gases for safety reasons is not discussed, inspectors may not recognize that this is not a prohibited activity. Another commenter said further that such a prohibition should not be required in the General Provisions, as properly written standards would make this provision unnecessary.

Response: The EPA recognizes the commenters' concern regarding the use of diluents for safety reasons rather than circumvention of regulations. Nonetheless, the Agency believes it is appropriate to include this prohibition, in order to prevent the intentional dilution of emissions in order "to conceal an emission that would otherwise constitute noncompliance with a relevant standard." Individual standards may override this provision where appropriate, for example, where a particular source category regularly uses diluents as a safety precaution.

Comment: Several commenters argued that the EPA should revise § 63.4(b)(3) of the proposed General Provisions to specify that only the fragmentation of operations done for the

sole purpose of evading regulation should constitute a prohibited activity. Commenters state that the fragmentation of operations may be done for legitimate business or safety reasons.

Response: The language in § 63.1(b) is clear in stating that what is prohibited is action taken to conceal emissions in order to circumvent regulation by a relevant standard. Section 63.1(b) says: "No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard." [Emphasis added] The regulation goes on to cite examples of such concealment, which include the provision regarding fragmentation of operations, which is of concern to these commenters. The Agency believes that this paragraph is clear in its intention to prohibit intentional concealment of emissions. Nonetheless, to clarify that any fragmentation of an operation to avoid regulation by a relevant standard is prohibited, the rule has been modified to delete the phrase "that applies only to operations larger than a specified size" from § 63.4(b)(3).

Comment: The commenter argues that the provisions of § 63.4(b) are inappropriate for inclusion in the General Provisions, because noncompliance with a relevant standard is actionable pursuant to that standard. The commenter claims that there is no authority for the EPA to pursue noncompliance with a standard independently under the General Provisions. The commenter also believes that the language in § 63.4(b) qualifies as enforcement guidance and is not suitable regulatory language.

Response: The EPA rejects the contention of the commenter that the EPA cannot pursue noncompliance with a standard independently under the General Provisions. Indeed, the circumvention provisions of § 63.4(b) have, in different form, been a part of the General Provisions to the air toxics

program (e.g., § 61.19) and have been enforced effectively without challenge for years. It is vitally important that this language be included in the regulation.

Comment: The commenter wonders how the provisions of §§ 63.4(a)(2) and (a)(5), prohibiting an owner or operator from failing to keep records, notify, report, or revise reports, as required under the General Provisions, apply to sources subject to programs for which a State or local agency has received delegation through section 112(l).

Response: If a State or local agency has received delegation under section 112(l), then records, notices, and reports should be maintained or sent to the delegated agency, rather than to the EPA, or to both, as specified in the delegation agreement. Furthermore, when States are delegated the authority to implement and enforce the General Provisions, they will have the authority to enforce the prohibitions in the cited paragraphs.

Comment: Several commenters were concerned that the provisions of § 63.4(a) could be used to assess duplicate violations against a source, by allowing a violation of a MACT standard's provisions to be considered a violation both of that standard and of § 63.4(a). One commenter suggested that the entire paragraph be deleted. Alternately, the commenter suggests language to be incorporated that indicates the provisions are not intended to create duplicative violations.

Response: Section 61.05(b), Prohibited activities, from the General Provisions of part 61, was the template from which the language at issue here was drawn. The EPA believes that it is useful to state in the General Provisions for part 63 that sources are prohibited from operating in violation of any of the subsequently promulgated standards, unless there is some exemption. If by some inadvertence, a subsequent rule omitted language such as "shall" or "must," but merely used "required" or some other similar language, then a violating defendant could potentially argue that they are excused from

liability. The referenced language eliminates that possibility. The provisions of § 61.05(b) have never been used to double penalties and have never otherwise been abused by enforcement personnel, nor is it the intention that this part 63 section be so utilized.

2.12.7 Emissions Averaging

Comment: Some commenters said that the proposed rule does not provide for generic emissions averaging, which will prevent sources from averaging among emission units at the same site that are subject to different MACT standards. One commenter said that because the individual standards have been developed independently, compounded by the isolated development of the section 112(g) and section 112(j) programs, it is probable that a given source will be subject to more than one emissions averaging scheme, and there will be no precedent for selecting the appropriate system for averaging emissions. The commenter said that the General Provisions should provide an overall framework for issues like emissions averaging, which extend beyond a single source category.

One commenter recommended that the General Provisions allow sources to utilize an emission trading allowance (across any source in a facility) so that as MACT standards are promulgated they contain a provision allowing sources to find trades outside or inside the "affected source," with the only restriction that trades occur within the same major source facility.

One commenter submitted comments on the General Provisions as they relate to the proposed HON (57 FR 62608, December 31, 1992). The commenter provided extensive comments on the changes to the emission averaging provisions of the HON that were the subject of a supplemental Federal Register notice (57 FR 62608). In general, the commenter opposed the proposed changes to the HON rule on the grounds that the changes would restrict the use of emissions averaging and the environmental as well as economic benefits that emissions

averaging offers. The commenter also asserted that the changes are contrary to the objectives of the Act.

Response: The EPA will determine whether a scheme for emissions averaging or other flexible compliance options is appropriate as the Agency develops each individual standard. Although the Agency will strive for consistency among these standards and their emissions averaging options, this may not necessarily lead to the same options being found appropriate in all cases. In the case where process and pollution control equipment, designation of the "affected source," or other industry-specific details differ widely, it will be more appropriate for the Agency to establish emissions averaging policies that are based upon specific characteristics of the source category being regulated by the individual standard. The Agency will respond to the comments on the General Provisions as they relate to the HON in the final notice that promulgates that regulation.

Comment: Some commenters expressed their support for the inclusion of the concept of emissions averaging in the General Provisions and felt that the proposed definition was adequate. However, one commenter said that either the phrase "emission debits" should be defined or the word "debits" should be deleted to clarify the definition.

Response: The Agency agrees that the definition should be clarified, and the word "debits" has been deleted.

2.12.8 Other Miscellaneous Comments

2.12.8.1 Editorial Revisions.

Comment: Various commenters suggested editorial revisions to the proposed General Provisions that they believed would clarify the rule or make it easier to understand.

Response: The EPA has considered the commenters' suggestions, and, where appropriate, these revisions have been incorporated into the final rule.

2.12.8.2 Working Versus Calendar "Days".

Comment: Some commenters said that "days" should be defined in terms of "working days" and not in terms of "calendar days." The commenters said that this distinction is particularly crucial when required activities must occur within a short time frame.

Response: The Agency's use of calendar days in the part 63 General Provisions is consistent with other General Provisions. The term "calendar days" provides an unambiguous time frame, which is appropriate in the General Provisions. In certain places in the final General Provisions [e.g., see § 63.6(e)(3)(iv)], working days are specified as the reporting time period. Except in such cases where the term "working days" is explicitly used, the reader should assume that calendar days are intended.

2.12.8.3 Regulation Promulgation Schedule.

Comment: One commenter said that the regulation promulgation schedule defined in § 63.2 should be included as an appendix to part 63.

Response: The regulation promulgation schedule was published in the Federal Register on December 3, 1993 (see 58 FR 63941). It cannot be added to the rule as an appendix because, by the terms of the statute, it is not a rule and therefore cannot be published in the Code of Federal regulations. However, the regulation promulgation schedule may be obtained by contacting the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD-13), Research Triangle Park, North Carolina 27711.

2.12.8.4 Volatile Organic Compound (VOC) Credits.

Comment: One commenter said that the EPA should codify general principles and presumptions in the General Provisions that outline the EPA's policy regarding how reductions of HAP that are also VOC's will be credited under programs related to VOC reduction, e.g., new source review. At a minimum, the

commenter said that the EPA should cross-reference in the General Provisions its other published guidance affecting the creditability of section 112 reductions under other sections.

Response: The General Provisions are a rule providing requirements that must be met by HAP sources in order to be in compliance with the requirements of section 112 of the Act. It is not appropriate to include policy statements concerning other programs in such a rule. In addition, if guidance concerning VOC credit in other programs were included in this rule, the rule would need to be amended if the guidance were updated. Policy statements concerning VOC credit are more appropriately contained in guidance issued by the VOC control program.

2.12.8.4 Case-by-Case Changes.

Comment: One commenter requested that the proposed regulations be revised to allow sources to request alternative, source-specific administrative procedures and compliance-related activities. The commenter said that the courts have recognized that allowing a "safety valve" in EPA regulations is essential and, without such a provision, the EPA regulations are likely to be found to be invalid or "incomplete."

Response: Section 112 of the Act specifically permits sources to obtain approval for alternatives to section 112(h) work practice standards. The General Provisions address this in § 63.6(g). In addition, the Agency believes that the general rulemaking authority of the Act would provide the authority to allow the Administrator to consider a petition from an individual source for permission to use an alternative approach to compliance under some circumstances. Individual standards may also provide specifically for alternative approaches appropriate to the circumstances of that standard.

2.12.8.5 Section 112(r) Applicability.

Comment: One commenter said that the General Provisions should, at a minimum, state that all sources of HAP have a

general duty to prevent accidents as provided in section 112(r) of the Act. The final rule should state also that facilities possessing one or more of the substances listed in section 112(r) must comply with the requirements of that subsection respecting accidental releases.

Response: The EPA agrees with the commenter that the accidental release program is an important program and that it represents a major initiative under the Act to prevent the health and safety impacts of accidental releases of HAP. However, the Administrator believes that the program is best discussed in the context of the section 112(r) rulemaking, and no changes have been made in the General Provisions in this respect.

2.12.8.6 Request for Opportunity for Additional Notice and Comment.

Comment: One commenter said that the Agency's "piecemeal" approach to section 112 implementation has resulted in contradictory statements and inconsistent structures between the various section 112 rulemakings. This situation prejudices the ability of the regulated community to assess and comment on these rules, which contravenes section 553(c) of the Administrative Procedures Act and section 307(d)(3) of the Clean Air Act. The commenter said that in order for the EPA to rectify this situation, it should provide the opportunity for additional comment on the proposed part 63 General Provisions in the context of related rulemakings, including, but not necessarily limited to, the section 112(g) regulations and the section 114(a)(3) enhanced monitoring and compliance certification requirements.

Another commenter said that the EPA should acknowledge in the final rulemaking that the subsequent section 112(b), (d), and (f) rulemakings are "new information," for purposes of affording judicial review of the General Provisions under section 307 of the Act, and their applicability and appropriateness will be weighed fully during each specific

section 112 rulemaking.

The commenter also asked how the Agency will conduct regulatory impact assessments for future rules, if the monitoring, recordkeeping, and other implementation features are incorporated by reference from the General Provisions.

Response: The statutory scheme requires that the EPA promulgate the section 112 regulations over a multi-year period. As new rules are added to the toxics program, the EPA will endeavor to promote consistency between those rules. The development of the General Provisions is part of the effort to achieve such consistency. By putting general requirements applicable to all sources in one place, the regulatory process is simplified.

The EPA does not agree that the General Provisions should be subject to renewed judicial review every time a new standard is promulgated. This would subject sources to tremendous added uncertainty because even after a MACT standard is final the General Provisions would continue to be subject to revision every time a subsequent standard underwent judicial review. Instead, the EPA believes that it is appropriate for commenters on proposed rules to question and comment on which provisions of the General Provisions should or should not be applicable to each standard. This does not subject the General Provisions themselves to review multiple times, but it does allow an evaluation of their applicability at appropriate times without calling the finality of other standards into question.

In response to the question about regulatory impact assessments, the EPA will evaluate the impact of individual rules as required by the Paperwork Reduction Act. Each analysis will include an estimate of the impact of all provisions of the rule, including the estimated burden associated with complying with the General Provisions.

2.12.8.7 State Authority to Override.

Comment: One commenter said that the EPA should allow

States to act only in a manner consistent with the Act, because the Act imposes substantive obligations upon permitting authorities that cannot be suspended by State action. The commenter objected to the presumption that States could impose requirements more stringent than those in a MACT standard.

Response: The EPA does not have the authority under the Clean Air Act to limit State actions to those that are no more stringent than the Federal requirements. Section 112(d)(7) of the Act states that:

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, or other authority of this Act or a standard issued under State authority.

Therefore, this change was not made to the General Provisions.

2.12.8.8 Alternative Emission Standard.

Comment: One commenter said that the EPA should explain how the section 112 alternative emission standard allowance is related to the SIP equivalency allowance provided for in title V. If possible, both SIP equivalency and the alternative emission standard allowances should be implemented through the operating permit program and through State construction permit programs.

Response: Section 112 does not require that alternative emission standards be approved through the title V permit process. Section 112(h) merely requires notice and comment and Administrator approval. Thus, a source can receive approval of an alternative emission standard before the State in which it is located has an approved title V permit program in effect. However, as with all section 112 standards, alternative emission standards will ultimately become part of each source's title V permit.

2.12.8.9 Overlapping Requirements.

Comment: One commenter concurred with § 63.1(a)(3),

which states that when standards overlap, a source need only comply with the more stringent requirements. The commenter said that the Agency should specify the procedures by which a stringency determination would be made and clarify the appropriate criteria for making such a determination.

Response: After a part 70 permit program is approved in the State in which the source is located, the results of the stringency determination will be included in the source's operating permit. Stringency determinations will be made on a case-by-case basis by the enforcement Agency in conjunction with the source.

Comment: One commenter said that even if the EPA attempts to list clearly in each MACT standard the portions of the General Provisions that apply, there still will be a number of unanticipated questions that will arise. The commenter suggested that the EPA add a section to the General Provisions requiring a 30-day period in which the Agency must resolve any questions resulting from overlapping requirements.

Response: The EPA believes that many of these issues should be resolved prior to promulgation of the individual standards. The remaining issues are more appropriately resolved in the course of the part 70 permitting process, and will be addressed as expeditiously as possible. Therefore, the EPA does not believe that this change is needed.

2.12.8.10 Area Source Treatment.

Comment: One commenter said that the final rule should be amended to specify that sources that are affected sources only because of GACT requirements should generally qualify for less burdensome methods of compliance.

Response: The rulemaking process for individual part 63 emission standards will address any special needs of area sources including whether those sources qualify for GACT rather than MACT methods of compliance.

APPENDIX A
TIMELINE SUMMARY TABLES

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
Construction and Reconstruction				
63.5(d)(1)(i)	Owner/operator (O/o) submit application for approval of construction or reconstruction	As soon as practicable before construction or reconstruction that commences after the effective date; as soon as practicable but at least 60 days after the effective date for sources that commence construction or reconstruction before the effective date		X
63.5(e)(2)(i)	Administrator response period to approve application or notify o/o of intent to deny begins when the submittal is complete	Within 60 days; status report to o/o within 30 days of receipt of original application or supplementary info.		X
63.5(e)(2)(ii)	O/o respond with additional information to Administrator's notice of incomplete application	Within 30 days		X
63.5(e)(3)(ii)	O/o respond with additional information to Administrator's notice of intent to deny application	Within 30 days		X
63.5(e)(4)	Final action by Administrator on application	Within 60 days from presentation of final arguments or within 60 days after date specified for presentation if none is made		X
Compliance with Standards and Maintenance				
63.6(b)(1)	If initial startup before effective date of relevant standard (RS) - o/o comply with RS effective date	RS effective date		X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.6(b)(2)	If initial startup after effective date of RS - o/o comply with standard under 112(d), 112(f), or 112(h)	At startup of source		X
63.6(b)(3)	Construction or reconstruction is after proposal under 112(d), 112(f), or 112(h) but before effective date (if promulgated standard more stringent than proposed and o/o complies with proposed standard during 3-year period immediately after effective date) - o/o shall comply with final standard	No later than 3 years after promulgation date		X
63.6(b)(4)	Construction or reconstruction is after proposal of RS under 112(d) but before proposal date of RS under 112(f) - o/o shall comply with emission standard under 112(f)	No later than 10 years after construction or reconstruction commenced unless 112(f) is promulgated more than 10 years after construction or reconstruction commenced [then refer to (b)(1), (b)(2)]		X
63.6(b)(7)	Any new area source that becomes an affected major source - o/o shall comply	Upon becoming a major source		X
63.6(c)(1)	O/o shall comply with standard under 112(d) or 112(h)	Compliance date in RS not to exceed 3 years	X	
63.6(c)(2)	O/o shall comply with standard under 112(f)	No later than 90 days after standard's effective date	X	
63.6(c)(5)	Any existing area source that becomes a major source	By the date specified in the RS for existing (area) sources	X	
63.6(e)(3)(iv)	If actions taken during startup, shutdown, or malfunction (SSM) are not consistent with SSM plan	Report actions within 2 working days with letter following within 7 working days after the end of the event	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.6(e)(3)(viii)	O/o shall revise the SSM plan if a malfunction occurs that is not addressed in the plan	Within 45 days after the event	X	X
63.6(h)(4)	O/o shall notify Administrator of anticipated date for conducting opacity or visible emissions observations	60 days before observations	X	X
63.6(h)(5)(i)(A)	Opacity or visible emissions observations: If no performance test required under §63.7, observations shall be conducted	Within 60 days after achieving maximum production rate and no later than 120 days after initial startup or effective date of RS		X
63.6(h)(5)(i)(A)	Opacity or visible emissions observations: If no performance test required under §63.7, observations shall be conducted	Within 120 days after compliance date	X	
63.6(h)(5)(i)(B)	If unable to perform opacity/visible emission observations within time frame, reschedule	As soon as possible, but not later than 30 days after initial performance test date	X	X
63.6(h)(7)(ii)	If o/o submits COMS data for compliance with opacity emission standard, notify Administrator in writing	Simultaneous with notification of performance test	X	X
63.6(i)(4)(i)(B)	O/o request for extension of compliance with RS under 112(d) [not to exceed 1 year (3 years if mining waste operations)--see 63.6(i)(4)(i)(A)]	No later than 12 months before compliance date if no emission points in an emissions average; no later than 18 months if including emission points	X	
63.6(i)(4)(ii)	Request for extension of compliance with RS under 112(f) (maximum of 2 years)	No later than 15 days after effective date of RS	X	

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.6(i)(5)	Request for extension of compliance with RS when BACT or LAER controls installed [until 5 years after installation--see 63.6(i)(2)(ii)]	No later than 120 days after promulgation date of RS	X	
63.6(i)(12)(i)	Administrator/State will notify o/o of approval or intention to deny request for extension of compliance under 112(d)	Within 30 days of receipt of sufficient information	X	
63.6(i)(12)(i)	Administrator/State will notify o/o of status of application [112(d)]	Within 30 days after receipt of original information/ supplementary information	X	
63.6(i)(12)(ii)	O/o shall submit supplementary information if required [112(d)]	Within 30 days of notice from Administrator	X	
63.6(i)(12)(iii) (B)	If o/o is notified of intent to deny extension, o/o may present additional information or arguments [112(d)]	Within 15 days from receipt of notice of intent to deny	X	
63.6(i)(12)(iv)	Final determination of denial due [112(d)]	30 days after presentation of information or arguments; or 30 days after the final date specified for presentation	X	
63.6(i)(13)(i)	Administrator will notify o/o of approval or intent to deny for RS under 112(f) after receipt of sufficient information	Within 30 days	X	
63.6(i)(13)(i)	Administrator will notify o/o of status of application [112(f)]	Within 15 days after receipt	X	
63.6(i)(13)(ii)	O/o is allowed to present additional information/arguments [112(f)]	Within 15 days after notification	X	
63.6(i)(13)(iii) (B)	Administrator will notify o/o of intent to deny with o/o allowed to present additional information/arguments [112(f)]	Within 15 days	X	

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.6(i)(13)(iv)	Administrator will make final determination [112(f)]	Within 30 days after final date of presentation	X	
Performance Testing Requirements				
63.7(a)(2)(i)	Performance test required for new source with initial startup date before effective date	Within 180 days after effective date of RS		X
63.7(a)(2)(ii)	Performance test required for new source that has an initial startup date after effective date	Within 180 days after initial startup		X
63.7(a)(2)(iii)	Performance test required for existing source under 112(d) standard	Within 180 days after compliance date in RS; or within 180 days after initial startup	X	
63.7(a)(2)(iv)	Performance test required for existing source under 112(f) standard	Within 180 days after compliance date	X	
63.7(a)(2)(v)	Performance test required after termination of compliance extension	Within 180 days after termination date	X	
63.7(a)(2)(vi)	Performance test required for new source subject to RS under 112(f) and construction/ reconstruction is commenced after proposal date of standard under 112(d) but before proposal date of RS under 112(f)	Within 180 days after compliance date		X
63.7(a)(2)(ix)	Conduct performance testing - if promulgated standard stricter than proposed	Within 180 days after startup (as proposed) and within 3 years and 180 days after startup (as promulgated); or comply with promulgated standard within 180 days		X
63.7(b)(1)	O/o shall notify Administrator of intention to conduct performance test	At least 60 days before performance test is conducted	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.7(b)(2)	O/o shall notify Administrator of delay in test due to unforeseeable circumstances and specify revised test dates	Within 5 days prior to originally scheduled test date	X	X
63.7(c)(2)(iv)	O/o shall submit site-specific test plan (SSTP) to Administrator upon request	At least 60 days before performance test is conducted or at a mutually agreed upon schedule	X	X
63.7(c)(3)(i)	Administrator will notify o/o of approval or intent to deny SSTP (if review of SSTP requested)	Within 30 days after receipt of plan and within 30 days after receipt of additional information	X	X
63.7(c)(3)(i)(B)	O/o may provide additional information after notice of intent to deny (if review of SSTP requested)	Within 30 days after receipt of notice of intent to deny	X	X
63.7(c)(3)(ii)(A)	If the Administrator does not approve SSTP within time period specified in 63.7(c)(3)(i), and the o/o intends to use the methods specified in the standard, the o/o shall conduct test	Within the time specified in this section	X	X
63.7(c)(3)(ii)(B)	If the Administrator does not approve use of alternative method within 30 days of the test, the test date may be extended	Within 60 days after approval	X	X
63.7(c)(4)(i)	O/o shall request performance audit materials	45 days prior to test date	X	X
63.7(f)(2)(i)	If o/o uses alternative test method other than in RS, the o/o shall notify the Administrator of intent and submit results of Method 301 validation	No later than with submission of SSTP; or at least 60 days before the performance test if a SSTP is not submitted	X	X
63.7(g)(1)	Report results of performance test including analysis of samples, raw data, and emissions determination	Within 60 days after each test is completed	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.7(h)(3)(i)	Request waiver of initial performance test	Accompany request for extension of compliance; or at least 60 days before performance test if SSTP not submitted	X	X
63.7(h)(3)(ii)	Request waiver of subsequent performance test	At least 60 days before the performance test	X	X
Monitoring Requirements				
63.8(c)(1)(i)	O/o shall repair any routine CMS malfunctions as defined by SSM plan	Immediately	X	X
63.8(c)(1)(ii)	O/o shall provide initial notification followed by a follow-up report that certifies nonroutine CMS repairs are complete or provides a corrective action plan and schedule	Initial report within 24 hours after commencing actions inconsistent with the plan; follow-up report within 2 weeks	X	X
63.8(c)(3)	CMS shall be installed, operational, and data verified	Either prior to or in conjunction with performance test	X	X
63.8(c)(6)	O/o shall check the zero and high level calibration drifts of CMS	Once daily	X	X
63.8(d)(2)	O/o shall submit a site-specific performance evaluation test plan for CMS performance upon request	See (e)(3)	X	X
63.8(d)(3)	Quality Control Program: O/o using CMS system and subject to monitoring shall develop CMS quality control program	Current version on file; keep previous versions for 5 years	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.8(e)(2)	O/o shall notify Administrator of date of CMS performance evaluation	Simultaneous with notification of performance test under §63.7(b) or at least 60 days prior to evaluation	X	X
63.8(e)(3)(iii)	O/o shall submit site-specific performance evaluation test plan upon request	At least 60 days before the performance test or performance evaluation is conducted or at a mutually agreed upon schedule	X	X
63.8(e)(3)(v)(A)	If the Administrator does not approve the site-specific performance evaluation plan within the time period specified and the o/o intends to use monitoring methods specified in the standard, the o/o shall conduct the performance evaluation	Within time specified in 63.7(c)(3)	X	X
63.8(e)(3)(v)(B)	If the Administrator does not approve use of the alternative method within 30 days of the performance evaluation, o/o may receive extension to conduct evaluation	60 days after approval	X	X
63.8(e)(4)	If a performance test is not required, or has been waived, the o/o shall conduct performance evaluation	No later than 180 days after compliance date	X	X
63.8(e)(5)(i)	O/o shall submit results of performance evaluation	Simultaneous with results of performance test under §63.7 or within 60 days of completion of evaluation if no test required	X	X
63.8(e)(5)(ii)	For COMS, submit to Administrator copies of written report of results of COMS performance evaluation if being used for opacity compliance	At least 15 days before performance test under §63.7	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.8(f)(4)(i)	Request for use of an alternative monitoring method may be submitted to Administrator	Anytime, provided it is not used to demonstrate compliance with RS	X	X
63.8(f)(4)(i)	If alternative monitoring method is to be used to demonstrate compliance with RS, submit application	No later than with SSTP under §63.7(c) (if requested) or with site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation	X	X
63.8(f)(5)(i)	Administrator will notify o/o of approval or intent to deny use of alternative monitoring method	Within 30 days of receipt of original request or additional information	X	X
63.8(f)(5)(i)(B)	O/o may respond with additional information to the Administrator's notice of intent to deny	As specified by the Administrator	X	X
63.8(f)(6)(iii)	O/o shall notify Administrator if the source exceeds the relative accuracy test criterion	Within 10 days of occurrence	X	X
Notification Requirements				
63.9(b)(2)	If source has initial startup before effective date of RS, o/o shall notify Administrator that the source is subject to standard	No later than 120 days after effective date	X	X
63.9(b)(3)	If source has initial startup after effective date and application for approval of construction or reconstruction is not required, o/o shall notify Administrator that source is subject to standard	No later than 120 days after initial startup		X
63.9(b)(4)	If initial startup is after effective date and application for approval of construction or reconstruction is required, o/o shall notify Administrator of:			X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
	• Intent to construct/reconstruct	As soon as practicable before construction or reconstruction but no sooner than the effective date of standard		X
	• When construction/reconstruction commenced	No later than 30 days after commencement		X
	• Anticipated date of startup	No more than 60 days, nor less than 30 days before startup		X
	• Actual date of startup	Within 15 days after startup		X
63.9(b)(5)	After the effective date of RS, if o/o intends to construct/reconstruct, o/o shall notify Administrator	As soon as practicable before construction or reconstruction but no sooner than the effective date of standard		X
63.9(b)(5)	O/o shall notify the Administrator if construction/reconstruction has commenced and initial startup has not occurred before effective date	As soon as practicable before construction or reconstruction but no later than 60 days after effective date of standard		X
63.9(c)	If o/o cannot comply with RS by compliance date or if the o/o has installed BACT/LAER, may submit a compliance extension request	In accordance with §63.6(i)(4) through (i)(6)	X	X
63.9(d)	If o/o is subject to special compliance requirements [§63.6(b)(3) and (4)], o/o shall notify Administrator of compliance obligations	No later than notifications listed in 63.9(b) for new sources		X
63.9(e)	Notify Administrator of intent to conduct performance test	60 days before test	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.9(f)	Notify Administrator of anticipated date for conducting opacity or visible emission observations if required by RS	Submit with notice of intent to conduct performance test (60 days prior)	X	X
63.9(f)	Opacity or visible emissions observations: If no performance test required under § 63.7, or visibility or other conditions prevent observations, notify Administrator	No less than 30 days before observations	X	X
63.9(g)(1)	If required to use CMS, notify the Administrator of the date CMS performance evaluation is scheduled to begin	Simultaneous with notification of test date under §63.7(b)	X	X
63.9(g)(1)	If performance test not required or waived, notify Administrator of the date of performance evaluation	60 days before evaluation		
63.9(g)(2)	Notify Administrator if COMS data will be used to determine compliance with opacity emission standard	60 days before performance test	X	X
63.9(g)(3)	Notify Administrator if criterion necessary to continue use of alternative accuracy testing has been exceeded	No later than 10 days after occurrence	X	X
63.9(h)(2)(ii)	If not permitted, notify Administrator of compliance status following completion of the relevant compliance demonstration activity specified in the RS	Within 60 days, unless notifying compliance with opacity or visible emission standard, which shall be submitted within 30 days	X	X
63.9(h)(3)	If permitted, notify Administrator of compliance status following completion of the relevant compliance demonstration activity specified in the RS	Within schedules established by operating permit, including those of RS	X	X
63.9(h)(5)	If o/o submits estimates or preliminary information in application for approval of construction/reconstruction, submit actual information	With initial notification of compliance status		X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.9(i)(2)	If an o/o wishes to change a time period or postmark deadline, request the adjustment	As soon as practicable before subject activity	X	X
63.9(i)(3)	The Administrator will respond to the request to change a specified time period	Within 15 calendar days of receipt of information	X	X
63.9(j)	Any change in information already provided to Administrator under §63.9 shall be provided to Administrator	Within 15 days after the change	X	X
Recordkeeping and Reporting Requirements				
63.10(d)(2)	O/o shall report results of performance tests	Within 60 days following test	X	X
63.10(d)(3)	O/o shall report opacity or visible emission observations	With results of performance test	X	X
63.10(d)(3)	If no performance test required or visibility or other conditions exist which prevent observations, o/o shall report	Within 30 days following observations	X	X
63.10(d)(4)	If o/o submits progress reports for extension of compliance	Submit by dates specified in extension	X	X
63.10(d)(5)(i)	O/o shall submit SSM report (if all actions taken are consistent with SSM plan)	Semiannually or simultaneous with excess emissions and CMS performance reports	X	X
63.10(d)(5)(ii)	O/o shall submit SSM report (if any action taken is not consistent with SSM plan)	Report actions within 2 working days followed by written report within 7 working days	X	X
63.10(e)(2)(i)	O/o using CMS shall submit to Administrator written report of the results of CMS performance evaluation	Simultaneous with performance test results	X	X
63.10(e)(2)(ii)	O/o using COMS to determine opacity compliance shall submit to Administrator results of COMS performance evaluation	Within 15 days before the performance test required	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.10(e)(3)(i)	O/o required to install a CMS shall submit an excess emissions and CMS performance report and/or summary report to Administrator--	Semiannually	X	X
	<u>Except:</u> If more frequent reporting is specified in RS	RS requirement	X	X
	<u>Except:</u> If CMS data are used for direct compliance determination and excess emissions occur	Quarterly	X	X
	<u>Except:</u> If Administrator determines that more frequent reporting required	Case-by-case	X	X
63.10(e)(3)(ii)	If RS calls for quarterly report, o/o may reduce submittal of excess emissions and CMS performance report to semiannual if o/o meets certain requirements	Semiannual	X	X
63.10(e)(3)(iii)	If Administrator denies request to reduce frequency of reporting, Administrator will notify o/o	Within 45 days after receiving notice from o/o	X	X
63.10(e)(3)(v)	Submit excess emissions and monitoring system performance reports and summary reports (if required)	Postmarked by the 30th day following end of each calendar half or quarter	X	X
63.10(e)(3)(vii)	Submit summary report only if excess emissions or control system parameter exceedances for reporting period are less than 1 percent of total operating time for reporting period and CMS downtime for reporting period is less than 5 percent of total operating time for reporting period	Same as (e)(3)(v)	X	X
63.10(e)(3)(viii)	Submit summary report, excess emissions, and COMS performance report if excess emission or process or control system parameter exceedances are 1 percent or greater or CMS downtime is 5 percent or greater	Same as (e)(3)(v)	X	X
63.10(e)(4)	O/o using COMS shall record and submit to Administrator monitoring data produced during performance test under §63.7	Submit with performance test results under §63.10(d)(2)	X	X

TABLE A-1. TIMING OF GENERAL PROVISIONS ACTIVITIES

Section	Activity	Timeline	Existing	New or Reconst. Sources
63.10(f)(3)	If o/o requests waiver of R&R requirements	Submit with request for extension of compliance, compliance progress report, compliance status report, in source's permit, or in excess emission and CMS performance report	X	X
63.10(f)(4)	Administrator will approve or deny request for waiver when he/she	Approves or denies extension of compliance; makes determination of compliance; or makes determination of progress towards compliance	X	X

TECHNICAL REPORT DATA <i>(Please read Instructions on the reverse before completing)</i>		
1. REPORT NO. EPA-450/3-91-019b	2.	3. RECIPIENT'S ACCESSION NO.
4. TITLE AND SUBTITLE General Provisions for 40 CFR Part 63 Background Information for Promulgated Regulation	5. REPORT DATE February 1994	6. PERFORMING ORGANIZATION CODE
7. AUTHOR(S)	8. PERFORMING ORGANIZATION REPORT NO.	
9. PERFORMING ORGANIZATION NAME AND ADDRESS Office of Air Quality Planning and Standards U.S. Environmental Protection Agency Research Triangle Park, N.C. 27711	10. PROGRAM ELEMENT NO.	11. CONTRACT/GRANT NO. 68-D1-0119
12. SPONSORING AGENCY NAME AND ADDRESS Office of Air Quality Planning and Standards Office of Air and Radiation U.S. Environmental Protection Agency Research Triangle Park, N.C. 27711	13. TYPE OF REPORT AND PERIOD COVERED Final	14. SPONSORING AGENCY CODE
15. SUPPLEMENTARY NOTES		
16. ABSTRACT General Provisions are being promulgated for 40 CFR Part 63 (a new part) which will include national emission standards for hazardous air pollutants (NESHAP) for source categories to be established pursuant to Section 112 of the Clean Air Act Amendments of 1990 (CAAA). The promulgated general provisions eliminate the need to repeat general information and requirements within these standards; they include "generic" information, such as definitions of terms, and sections that spell out the administrative responsibilities of EPA and the compliance responsibilities of owners or operators who are subject to a relevant emission standard or other requirement. This document contains a summary of changes to the rule since proposal and a summary of the public comments on the proposed rule and EPA's responses.		
17. KEY WORDS AND DOCUMENT ANALYSIS		
a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Air pollution Pollution control Administrative practice and procedure Hazardous substances Recordkeeping and Reporting	Air pollution control	
18. DISTRIBUTION STATEMENT Unlimited	19. SECURITY CLASS (This Report) Unclassified	21. NO. OF PAGES
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