

experienced State inspectors who are responsible for operating State PCB and asbestos compliance monitoring programs. This would not be in the public interest since States with compliance monitoring programs depend on EPA grant funds to retain the skilled personnel needed for effective program implementation. Moreover, in States that scale back programs due to funding reductions, any turnover of experienced inspectors would require EPA to divert its limited grant dollars from high priority compliance monitoring activities to training new inspectors.

2. States with existing TSCA asbestos and PCB compliance monitoring programs depend on EPA grant funding to run these programs and State activities under the grants comprise a significant portion of EPA's national program for ensuring compliance with the TSCA asbestos and PCB requirements. Under a competition, these States may receive zero or reduced funding, which could cause them to discontinue their programs or cut back on inspections, potentially leading to an increased rate of non-compliance with PCB and asbestos regulations. Non-compliance with the regulations would pose a public health risk associated with the improper handling of PCB and asbestos materials.

3. Regions need to be able to work closely with States to ensure that their compliance monitoring programs meet current EPA standards and policies to ensure a cooperative and effective inspection program. Building and maintaining on-going State capacity is an important outcome of this grant program. This is particularly true for States seeking to become waiver States for purposes of the Asbestos Hazard Emergency Response Act (AHERA), which means they run the program entirely including the enforcement component. The need for such intensive interaction both before and during the application process makes it impracticable to compete these grants.

This grant regulatory change is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute and can be taken by EPA as a final action. Accordingly, the text of § 35.312 will read as follows: "EPA will allot and award Toxic Substances Control Act compliance monitoring grant funds to States in accordance with national program guidance." In addition, EPA is renaming the title of this section "Basis for allotment" from "Competitive process".

Statutory and Executive Order Reviews: Under Executive Order 12866

(58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not have tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final grant action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Grant programs—environmental protection, Reporting and recordkeeping requirements.

Dated: January 31, 2006.

Stephen L. Johnson,
Administrator.

■ EPA amends 40 CFR part 35 as follows:

PART 35—[AMENDED]

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq.; 42 U.S.C. 6901 et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 13101 et seq.; Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996); Pub. L. 105-65, 111 Stat. 1344, 1373 (1997).

■ 2. Section 35.312 is revised to read as follows:

§ 35.312 Basis for allotment.

EPA will allot and award Toxic Substances Control Act Compliance Monitoring grant funds to States based on national program guidance.

[FR Doc. 06-1309 Filed 2-10-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2002-0088, FRL-8008-2]

RIN 2060-AM90

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities, which were promulgated on April 16, 2003, under section 112(d) of the Clean Air Act (CAA). The amendments clarify the testing and monitoring requirements and startup and shutdown requirements for batch processes, make certain technical corrections, and add recent changes to be consistent with the NESHAP General Provisions.

DATES: The direct final rule is effective on April 14, 2006 without further notice, unless adverse comments are received by March 15, 2006 or by March 30, 2006 if a public hearing is requested. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2002-0088, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov and fairchild.susan@epa.gov.

- Fax: (202) 566-1741 and (919) 541-5600.

- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attn: Docket ID No. OAR-2002-0088, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR-2002-0088, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. OAR-2002-0088. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edkpub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail.

Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404-02), Attention Docket ID No. OAR-2002-0088, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at

<http://www.epa.gov/edkpub/index.jsp>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the EPA Docket Center, Docket ID No. OAR-2002-0088, EPA West Building, Room B-102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For further information contact Susan Fairchild, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504-05), Research Triangle Park, NC 27711; telephone number (919) 541-5167; fax number (919) 541-5600; e-mail address: fairchild.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS*	Examples of regulated entities
Industrial	327124	Clay refractories manufacturing plants.
Industrial	327125	Nonclay refractories manufacturing plants.

*North American Industry Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.9782 of the Refractory Products Manufacturing NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW. Following the Administrator's signature,

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

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments because the amendments clarify several of the requirements of the NESHAP, bring the NESHAP into consistency with the General Provisions to 40 CFR part 63, and make technical corrections to the NESHAP. However, in the Proposed

Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for refractory products manufacturing facilities if adverse comments are filed. If we receive adverse comment on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective, and which amendments are being withdrawn due to adverse comment. We will address all public comments on withdrawn amendments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by April 14, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

- I. Background
- II. Amendments to 40 CFR Part 63, Subpart SSSSS
 - A. Emission Testing
 - B. Control Device Operation
 - C. Operating Limits
 - D. Monitoring
 - E. Other Changes
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132, Federalism
 - F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Congressional Review Act

I. Background

The EPA promulgated the NESHAP for new and existing refractory products manufacturing facilities on April 16, 2003 (68 FR 18730) as 40 CFR part 63, subpart SSSSS. Shortly after promulgation of the Refractory Products Manufacturing NESHAP, EPA also promulgated amendments to the General Provisions to 40 CFR part 63 (68 FR 32586, May 30, 2003). After reviewing the final amendments to the General Provisions and comparing those to the Refractory Products Manufacturing NESHAP, we discovered discrepancies between sections of the General Provisions as cited in the NESHAP and the newly amended sections of the General Provisions. We also identified minor technical errors and other specific sections of the Refractory Products Manufacturing NESHAP that needed clarification.

Today's action includes amendments to the Refractory Products Manufacturing NESHAP that clarify the requirements for testing, control device operation, operating limits, and monitoring.

II. Amendments to 40 CFR Part 63, Subpart SSSSS

A. Emission Testing

The Refractory Products Manufacturing NESHAP specify several requirements that pertain to the testing of batch process sources. Because emissions of hazardous air pollutants (HAP) from a batch process source can vary significantly over the course of a batch cycle, the NESHAP specify emission limits in terms of the peak emissions period. In today's action, we are revising the definition of the peak emissions period in terms of the applicable emission limits to include separate definitions for the 3-hour peak total hydrocarbons (THC) mass emissions period, which applies to batch process sources that comply with the THC percentage reduction limit; the 3-hour peak THC emissions concentration period, which applies to batch sources that satisfy the THC emission concentration limit; and the 3-hour peak hydrogen fluoride (HF) mass emissions period, which pertains to the emission limits for batch process clay refractory products kilns. All references to the peak emissions period in the tables to 40 CFR part 63, subpart SSSSS, have been revised for consistency.

The NESHAP include provisions to allow the owner or operator of an affected batch process source to develop an emissions profile and use the profile to limit emissions testing to the peak emissions period. In today's action, we are amending 40 CFR 63.9802 to clarify that emissions profiles for sources subject to the THC emission limits must be developed using data collected at the maximum organic HAP processing rate. This amendment also clarifies that a new emissions profile must be developed if a facility wants to use an emissions profile to limit testing to the peak emissions period at a process, but increases its maximum organic HAP processing rate at that process. In addition, we are amending 40 CFR 63.9802 to clarify that emissions profiles for batch process clay refractory kilns must be developed using data from when the kiln is processing the clay refractory product with the highest uncalculated clay processing rate.

We are amending 40 CFR 63.9798(a) to eliminate the reference to permit renewal, and stating that subsequent performance tests must be conducted at least every 5 years. Item 1(b)(i)(1) of

Table 4 to Subpart SSSSS of Part 63 is amended to clarify that a sampling port is also required at the control device inlet if the owner or operator plans to develop an emissions profile or use the provision for reducing the operating temperature of a thermal or catalytic oxidizer on an affected batch process source. In both cases, sampling is required at the control device inlet. Item 8(a)(i)(5) of Table 4 to Subpart SSSSS of Part 63 is amended to specify the THC concentration in terms of the outlet of the control device. We also made other minor changes to this provision in Table 4 to simplify the wording.

Item 13 of Table 4 to Subpart SSSSS of Part 63 is amended to eliminate the reference to the THC percentage reduction limit. We have clarified that regardless of which THC emission limit applies to a specific source, the owner or operator of the source must measure not only the THC concentration, but also the oxygen concentration at the control device inlet for at least the 1-hour period that immediately follows the temperature reduction. This measurement is necessary for demonstrating that the source is meeting the limit of 20 parts per million dry volume (ppmvd) THC, corrected to 18 percent oxygen, after the oxidizer temperature has been reduced.

Item 13.a.5 of Table 4 to Subpart SSSSS of Part 63 is amended to clarify that only the THC emissions concentration limit applies following any reduction in the oxidizer temperature. We received comment on the proposed rule (67 FR 42108, June 20, 2002) requesting a second emission limit be allowed for sources wanting to meet a percentage reduction limit rather than an emission concentration limit. The commenter believed that since EPA had promulgated percentage reduction limits for other MACT standards to reduce emissions of THC, and since air pollution control devices are usually rated and installed with a minimum percent reduction achieved by the devices, that emission limit would be simpler to meet. At promulgation of the final rule (68 FR 18730, April 16, 2003), we changed the rule to allow regulated sources to meet either the percentage reduction limit or the concentration limit.

In the final rule, we allowed the choice between either the percentage reduction limit or the concentration limit, but required owners and operators to meet the selected emission limit during all times of operation. We also allowed owners and operators the option to turn off the control device when it was no longer needed. However, for those owners or operators

meeting the percentage reduction compliance option, it is not possible to meet that limit if the control device is not in operation. We believe that conserving energy is a beneficial option for all owners and operators, and regardless of the compliance option selected, all should have the opportunity to benefit from turning off the control device when it is no longer needed. Thus, we are clarifying that whether an owner or operator shows compliance with the percentage reduction limit or the concentration limit, compliance with the rule for a unit with a control device no longer in operation may only be demonstrated by meeting the concentration limit; that is, when the THC emissions are below 20 ppmvd corrected to 18 percent oxygen from the heated process unit. Owners and operators in this case may choose to meet the percentage reduction limit before turning off the control device and may show compliance with the concentration limit after turning off the control device.

Item 14(a)(i)(1) of Table 4 to Subpart SSSSS of Part 63 is amended to specify that the performance tests must be performed while processing the clay refractory product with the highest uncalcined clay processing rate.

B. Control Device Operation

Refractory products manufacturing plants typically produce a wide range of products, some of which may contain organic HAP binders or additives, while other products may contain only inorganic binders or additives that do not contain or form HAP. Many plants do not have dedicated thermal process units (e.g., dryers and kilns) for each type of product they manufacture and instead, use the same process units to manufacture products that emit HAP and products that do not contain or emit HAP. Recognizing this situation, we are amending 40 CFR 63.9792 of the NESHAP to clarify that control devices used to comply with the emission limits established by 40 CFR part 63, subpart SSSSS, do not have to be operated when an otherwise affected process unit is processing products that do not contain or release HAP. This amendment applies to sources subject to the THC emission limits as well as the emission limits for HF and hydrogen chloride (also known as hydrochloric acid).

Table 3 to Subpart SSSSS of Part 63, which specifies work practice standards, includes several options for controlling emissions of polycyclic organic matter from shape preheaters and pitch working tanks used in the manufacture of pitch-impregnated refractory products. Options include

exhausting the affected source to a thermal or catalytic oxidizer that is comparable to a thermal or catalytic oxidizer that is used to meet the emission limits for an affected defumer or coking oven. To clarify what is meant by a "comparable" thermal or catalytic oxidizer, we are amending 40 CFR 63.9824 to include a definition of "comparable control device."

C. Operating Limits

The Refractory Products Manufacturing NESHAP refer to the operating limit as the "maximum allowable organic HAP processing rate." We are amending the definition of maximum organic HAP processing rate in 40 CFR 63.9824 to distinguish between the operating limit and the actual processing rate measured during the performance test.

The Refractory Products Manufacturing NESHAP include several operating limits for clay refractory products kilns that are controlled by dry limestone adsorbers (DLA). We are amending the NESHAP to eliminate the operating limits of maintaining free-flowing limestone throughout the DLA because the term "free-flowing" may not be appropriate for the grade of limestone used in DLA. The remaining operating limits specified for DLA in the NESHAP are adequate for ensuring compliance with the emission limits for clay refractory products kilns.

As specified in Table 2 (Requirements for Establishing Operating Limits) of the rule, Subpart SSSSS of Part 63, owners and operators of certain thermal process sources of organic HAP are required to establish an operating limit for the maximum organic HAP processing rate. The organic HAP processing rate is a function of the amount of organic HAP in the raw materials and the amounts of those raw materials in the refractory product formulation. Because there are minor variations in the content of organic HAP in a specific binder or additive, the operating limit for the maximum organic HAP processing rate can inadvertently be exceeded without changing the product formulation. In today's action, we are amending the procedure for establishing the operating limit and clarifying that minor exceedances of the maximum organic HAP processing rate established during the performance test are not violations of the operating limit. Specifically, we are amending items 3(b) and 8(b) of Table 4 (Requirements for Performance Tests) to Subpart SSSSS of Part 63 to be consistent with the requirements in Table 2 that reflect a 10 percent allowance when calculating the operating limit.

Today's action amends the procedures for determining minimum temperature operating limits for thermal and catalytic oxidizers that are used to control emissions from certain batch process sources of organic HAP as they pertain to sources that comply with the provisions for reducing the operating temperature of a thermal or catalytic oxidizer.

We are also amending subpart SSSSS to clarify that owners or operators of batch process sources controlled with thermal or catalytic oxidizers must measure the oxidizer operating temperature throughout each entire test run.

D. Monitoring

The Refractory Products Manufacturing NESHAP require THC continuous emission monitoring systems on thermal process sources of organic HAP that use process changes or control devices other than thermal or catalytic oxidizers to meet the THC emission limits. We are amending 40 CFR 63.9800(i)(1) by adding a reference to sources that use process changes to meet the emission limits.

We are also amending 40 CFR 63.9800(i) to state that such sources must maintain the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

Today's action amends the definition of "deviation" in 40 CFR 63.9824 to include failure to provide adequate continuous monitoring systems (CMS) data for demonstrating compliance with any emission limit or other requirement. In addition, we are amending the requirement that the owner or operator of an affected source that is required to use a CMS to meet an operating limit must report any deviations from those operating limits.

E. Other Changes

We are amending the Refractory Products Manufacturing NESHAP to include definitions for Shutdown and Startup to preclude unnecessary reporting of batch process source operation.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory

action” as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a “significant regulatory action” because it raises novel legal or policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB approved the information collection requests for the NESHAP for refractory products manufacturing pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB assigned OMB control number 2060-0515 (EPA ICR No. 2040.02) to these information collection requests (ICR). A copy of the ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822T), EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; by e-mail at auby.susan@epa.gov; or by calling (202) 566-1672. You may also download a copy off the Internet at <http://www.epa.gov/icr>.

Today's action makes clarifying changes to the NESHAP for refractory products manufacturing and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the direct final rule amendments, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time

needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

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

After considering the economic impacts of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This action includes minor corrections and clarifications to the Refractory Products Manufacturing NESHAP that do not add any additional requirements.

Although the direct final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the direct final rule amendments on small entities. The EPA has limited the amendments to changes that clarify ambiguities of the Refractory Products Manufacturing NESHAP, correct citations to the General Provisions, and clarify the complex batch testing requirements of the Refractory Products Manufacturing NESHAP. The EPA believes that the amendments will simplify the NESHAP

and will not add additional burden to regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's direct final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year, nor do the direct final rule amendments significantly or uniquely impact small governments because there are no requirements that apply to such governments or impose obligations upon them. Thus, today's direct final rule amendments are not subject to the

requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

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

The direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State or local governments, and the direct final rule amendments will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate refractory products manufacturing facilities. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. Today's direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. In addition, the direct final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

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

This rule is not a "significant regulatory action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that the direct final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104-113; 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments implement clarifications and corrections to the NESHAP for refractory product manufacturing, but do not change any technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on April 14, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 7, 2005.

Stephen L. Johnson,
Administrator.

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

PART 63—[AMENDED]

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

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

Subpart SSSSS—[Amended]

■ 2. Section 63.9792 is amended as follows:

- a. Revising paragraph (b);
- b. Redesignating paragraph (f) as paragraph (g); and
- c. Adding a new paragraph (f).

§ 63.9792 What are my general requirements for complying with this subpart?

* * * * *

(b) Except as specified in paragraphs (e) and (f) of this section, you must

always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(f) For any affected source that is subject to any of the emission limits specified in Table 1 to this subpart, you do not have to operate the control device on that affected source under the conditions specified in paragraphs (f)(1) and (2) of this section.

(1) For any source that is subject to the THC emissions concentration limit or the THC percentage reduction limit, you do not have to operate the control device on that source when none of the refractory products that are being processed by that source contain or form an organic HAP.

(2) For any new clay refractory products kiln that is subject to the production-based mass emission limits or the percentage reduction limits for hydrogen fluoride (HF) and hydrogen chloride (HCl), you do not have to operate the control device on that kiln when none of the refractory products that are being processed by that kiln are clay refractory products, as defined in § 63.9824.

■ 3. Section 63.9798 is amended as follows:

- a. Revising paragraph (a);
- b. Revising paragraph (c) introductory text; and
- c. Revising paragraphs (c)(2) and (d).

§ 63.9798 When must I conduct subsequent performance tests?

(a) You must conduct a performance test at least every 5 years following the initial performance test.

(c) If you own or operate a source that is subject to the emission limits specified in items 2 through 9 of Table 1 to this subpart, you must conduct a performance test on the source(s) listed in paragraphs (c)(1) and (2) of this section before you start production of any refractory product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate, as defined in items 3(b) and 8(b) of Table 4 to this subpart,

established during the most recent performance test on that same source.

(2) Each affected kiln that follows an affected shape dryer or curing oven in the same process line and is used to process the refractory product with the higher organic HAP processing rate.

(d) If you own or operate a kiln that is subject to the emission limits specified in item 5 or 9 of Table 1 to this subpart, you must conduct a performance test on the affected kiln following any process changes that are likely to increase organic HAP emissions from the kiln (e.g., a decrease in the curing cycle time for a curing oven that precedes the affected kiln in the same process line).

■ 4. Section 63.9800 is amended as follows:

- a. Revising paragraph (g)(1);
- b. Revising paragraph (g)(3);
- c. Revising paragraph (i)(1) introductory text; and
- d. Adding paragraphs (i)(1)(iv) to (vi).

§ 63.9800 How do I conduct performance tests and establish operating limits?

(1) To determine compliance with the total hydrocarbon (THC) emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 1 of this section:

$$C_{THC_c} = \frac{2.9 \times C_{THC}}{(20.9 - C_{O_2})} \quad (\text{Eq. 1})$$

Where:

C_{THC_c} = THC concentration, corrected to 18 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{THC} = THC concentration (uncorrected), ppmvd

C_{O_2} = Oxygen concentration, percent

(3) To determine compliance with production-based HF and HCl emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of uncalcined clay processed for each test run using Equation 3 of this section:

$$MP = \frac{ER}{P} \quad (\text{Eq. 3})$$

Where:

MP = mass emissions of specific HAP (HF or HCl) per unit of production, kilograms of pollutant per megagram (pounds per ton) of uncalcined clay processed

ER = mass emissions rate of specific HAP (HF or HCl) during each performance test run, kilograms (pounds) per hour
 P = average uncalcined clay processing rate for the performance test, megagrams (tons) of uncalcined clay processed per hour

(1) For sources subject to the THC concentration limit specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must satisfy the requirements specified in paragraphs (i)(1)(i) through (vi) of this section.

(iv) You must meet the data reduction requirements specified in § 63.8(g).

(v) You must maintain the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

(vi) To calculate the oxygen correction specified in paragraph (i)(1)(v) of this section, you may use oxygen concentration measurements concurrent with THC concentration measurements, the average oxygen concentration measured during the most recent performance test on the affected source, or other oxygen concentration measurements that are representative of normal operation for the affected source.

■ 5. Section 63.9802 is revised to read as follows:

§ 63.9802 How do I develop an emissions profile?

(a) If you decide to develop an emissions profile for an affected batch process source, as indicated in item 8(a)(i)(4) or 17(b)(i)(4) of Table 4 to this subpart, you must measure and record mass emissions of the applicable pollutant throughout a complete batch cycle of the affected batch process source according to the procedures described in paragraph (a)(1) or (2) of this section.

(1) If your affected batch process source is subject to the THC concentration limit specified in item 6(a), 7(a), 8, or 9 of Table 1 to this subpart or the THC percentage reduction limit specified in item 6(b) or 7(b) of Table 1 to this subpart, you must measure and record the THC mass emissions rate at the inlet to the control device using the test methods, averaging periods, and procedures specified in items 10(a) and (b) of Table 4 to this subpart for each complete hour of the batch process cycle and while the source is processing the product with the maximum organic HAP processing rate.

(2) If your affected batch process source is subject to the HF and HCl percentage reduction emission limits in item 11 of Table 1 to this subpart, you must measure and record the HF mass emissions rate at the inlet to the control device through a series of 1-hour test runs using one of the test methods specified in item 14(a) of Table 4 to this subpart for each complete hour of the batch process cycle and while the source is processing the product with the highest uncalcined clay processing rate.

(b) You must develop a new emissions profile if you meet all of the conditions specified in paragraphs (b)(1) through (3) of this section.

(1) You own or operate a batch process source that is subject to the emission limits specified in item 6(a), 6(b), 7(a), 7(b), 8, or 9 of Table 1 to this subpart.

(2) You use an emissions profile to limit emission testing to the 3-hour peak emissions period.

(3) You begin manufacturing a new refractory product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate established during the most recent performance test on that same source.

■ 6. Section 63.9812 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.9812 What notifications must I submit and when?

* * * * *

(b) As specified in § 63.9(b)(2), if you start up your affected source before April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after April 16, 2003.

(c) As specified in § 63.9(b)(2), if you start up your new or reconstructed affected source on or after April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

* * * * *

■ 7. Section 63.9816 is amended by revising paragraph (c)(9) to read as follows:

§ 63.9816 What records must I keep?

* * * * *

(c) * * *

(9) If you operate a source that is subject to the THC emission limits specified in item 2 or 6 of Table 1 to this subpart and is controlled with a catalytic oxidizer, records of annual checks of catalyst activity levels and subsequent corrective actions.

* * * * *

■ 8. Section 63.9824 is amended as follows:

■ a. Revising paragraph (3) and adding paragraph (4) to the definition of *Deviation*;

■ b. Revising the definitions of *Maximum organic HAP processing rate* and *Peak emissions period*; and

■ c. Adding the definitions of *Comparable control device*, *Shutdown*, and *Startup*.

§ 63.9824 What definitions apply to this subpart?

* * * * *

Comparable control device means, subject to paragraphs (1), (2), and (3) of this definition, a control device with design and operating parameters that are comparable to the reference control device.

(1) For a thermal oxidizer, a comparable control device is either:

(i) A thermal oxidizer with a residence time at least as long as, and a combustion chamber operating temperature at least as high as the reference thermal oxidizer; or

(ii) A control device that has been demonstrated to control emissions to a level that is comparable to or better than the level of emissions control achieved by the reference thermal oxidizer.

(2) For a catalytic oxidizer, a comparable control device is either:

(i) A catalytic oxidizer with a space velocity no greater than, and a catalyst bed inlet temperature at least as high as the reference catalytic oxidizer; or

(ii) A control device that has been demonstrated to control emissions to a level that is comparable to or better than the level of emissions control achieved by the reference catalytic oxidizer.

(3) For other control devices, a comparable control device is one that has been demonstrated either through engineering calculations or emission testing to control emissions to a level that is comparable to or better than the level of control achieved by the reference control device.

* * * * *

Deviation * * *.

(3) Fails to meet any emission limitation (emission limit, operating limit, or work practice standard) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart; or

(4) Fails to provide adequate monitoring data for demonstrating compliance with any emission limitation (emission limit, operating limit, or work practice standard) or other applicable requirement established by this subpart due to a

malfunction or failure of any CMS required by this subpart.

* * * * *

Maximum organic HAP processing rate means the maximum rate at which the mass of organic HAP materials in refractory shapes are processed in an affected process unit. (See also the definition of *organic HAP processing rate*.)

* * * * *

Peak emissions period means the period of consecutive hourly average emissions of the applicable pollutant that is greater than any other period of consecutive hourly average emissions for the same pollutant over the course of a specified batch process cycle, as defined in paragraphs (1) through (3) of this definition. The peak emissions period is a function of the rate at which the temperature of the refractory shapes is increased, the mass and loading configuration of the shapes in the process unit, the constituents of the refractory mix, and the type of pollutants emitted.

(1) The 3-hour peak THC mass emissions period is the period of 3 consecutive hours over which the sum of the uncontrolled hourly THC mass emissions rates is greater than the sum of the uncontrolled hourly THC mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

(2) The 3-hour peak THC emissions concentration period is the period of 3 consecutive hours over which the sum of the THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the THC concentrations at the same sampling location, corrected to 18 percent oxygen, for any other period of 3 consecutive hours during the same batch process cycle.

(3) The 3-hour peak HF mass emissions period is the period of 3 consecutive hours over which the sum of the uncontrolled hourly HF mass emissions rates is greater than the sum of the uncontrolled hourly HF mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

* * * * *

Shutdown means the cessation of operation of an affected source. For an affected batch process source, shutdown means the cessation of operation during a batch cycle. Shutdown does not include normal periods between batch cycles when the batch process source is not in operation.

Startup means the setting into operation of an affected source. For an affected batch process source, startup means the initial startup of the source

or the startup of the source following maintenance, replacement of equipment, or equipment repairs. Startup does not include routine recharging of a batch process source at the start of a batch cycle.

* * * * *

- 9. Table 1 to subpart SSSSS is amended as follows:
- a. Revising items 6.a and b;
- b. Revising items 7.a and b;
- c. Revising item 8;
- d. Redesignating items 9, 10, and 11 as items 10, 11, and 12;

- e. Adding a new clarification as item 9;
- f. Revising newly redesignated items 11.a and b; and

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS

[As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:]

For . . .	You must meet the following emission limits . . .
* * * * *	* * * * *
6. Batch process units that are controlled with a thermal or catalytic oxidizer.	<ul style="list-style-type: none"> a. The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak THC mass emissions period must be reduced by at least 95 percent.
7. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer.	<ul style="list-style-type: none"> a. The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak THC mass emissions period must be reduced by at least 95 percent.
8. Batch process units that use process changes to reduce organic HAP emissions.	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
9. Batch process units that have turned off the control device or are not equipped with a control device.	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
10. Batch process kilns that are not equipped with a control device	The 2-run block average THC concentration for the 3-hour peak THC emissions concentration period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
11. Each new continuous kiln that is used to produce clay refractory products.	<ul style="list-style-type: none"> a. The 3-hour block average HF emissions must not exceed 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton kiln that is (lb/ton)) of uncalcined clay processed, OR the 3-hour block average HF mass emissions rate must be reduced by at least 90 percent; and b. The 3-hour block average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, OR the 3-hour block average HCl mass emissions rate must be reduced by at least 30 percent.
* * * * *	* * * * *

- 10. Table 2 to subpart SSSSS is amended as follows:
 - a. Revising item 1.c;
 - b. Revising item 4;
 - c. Revising 7;
 - d. Revising items 8.a and b and adding items 8.c through e;
 - e. Revising items 9.a and b, and adding new items 9.d through f; and
 - f. Removing item 11.b and redesignating items 11.c and d as items 11.b and c, respectively.

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS

[As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table]

For . . .	You must . . .
1. Each affected source listed in Table 1 to this subpart	<p style="text-align: center;">* * *</p> <p>b. Capture emissions and vent them through a closed system; and</p> <p>c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in § 63.9792(e) and (f), item 2 of this table, and item 13 of Table 4 to this subpart; and * * *</p>
* * * * *	* * * * *
4. Each affected continuous process unit	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the maximum allowable organic HAP processing rate established during the most recent performance test.
* * * * *	* * * * *
7. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the maximum allowable organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer	<p>a. Except as specified in item 8.b. of this table, maintain throughout the entire batch cycle the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and</p> <p>b. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfy the requirements of items 8.c. through 8.e. of this table;</p> <p>c. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintain the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart;</p> <p>d. From the time when the batch process unit reaches its maximum temperature, maintain the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the thermal oxidizer temperature reduction during the most recent performance test;</p> <p>e. For the remainder of the batch process cycle, maintain the thermal oxidizer combustion chamber temperature at or above the reduced thermal oxidizer temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.</p>

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued
 [As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table]

For . . .	You must . . .
9. Batch process units that are equipped with a catalytic oxidizer	a. Except as specified in item 9.b. of this table, maintain throughout the entire batch cycle the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and b. If complying with the provisions for reducing the catalytic oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfy the requirements of items 9.d through 9.f of this table; and c. Check the activity level of the catalyst at least every 12 months. d. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintain the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; e. From the time when the batch process unit reaches its maximum temperature, maintain the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the catalytic oxidizer temperature reduction during the most recent performance test; f. For the remainder of the batch process cycle, maintain the temperature at the inlet of the catalyst bed at or above the reduced catalyst bed inlet temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.
*	*

■ 11. Table 4 to subpart SSSSS is revised to read as follows:

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests.	i. The requirements of the General Provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; and (2) Identify the emission source that is tested; and (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; and (4) Repeat the performance test at least every 5 years; and (5) Repeat the performance test before changing the parameter value for any operating limit specified in your OM&M plan; and (6) If complying with the THC concentration or THC percentage reduction limits specified in items 2 through 9 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2.a.2 and 2.a.3. of this table; and (7) If complying with the emission limits for new clay refractory products kilns specified in items 10 and 11 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 14.a.i.4. and 17.a.i.4. of this table.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Select the locations of sampling ports and the number of traverse points. c. Determine gas velocity and volumetric flow rate. d. Conduct gas molecular weight analysis. e. Measure gas moisture content.	i. Method 1 or 1A of 40 CFR, part 60, appendix A. Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. (i) Method 3, 3A, or 3B of 40 CFR part 60, appendix A; or (ii) ASME PTC 19.10–1981—Part 10. Method 4 of 40 CFR part 60, appendix A.	(1) To demonstrate compliance with the percentage reduction limits specified in items 2.b., 3.b., 6.b., 7.b., 10, and 11 of Table 1 to this subpart, OR to develop an emissions profile, OR to satisfy the requirements of item 13.a. of this table, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; AND (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere. Measure gas velocities and volumetric flow rates at 1-hr intervals throughout each test run. As specified in the applicable test method. You may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B. As specified in the applicable test Method.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests. b. Satisfy the applicable requirements listed in items 3 through 13 of this table.	(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate, as defined in § 63.9824, reasonably expected to occur; and (2) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum allowable organic HAP processing rate established during the most recent performance test, as specified in § 63.9798(c); and (3) Repeat the performance test on any affected uncontrolled kiln following process changes (e.g., shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln, as specified in § 63.9798(d).
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs. b. Establish the operating limit for the maximum organic HAP processing rate.	The appropriate test methods specified in items 1, 4, and 5 of this table. i. Method 311 of 40 CFR part 63, appendix A, OR material safety data sheets (MSDS), OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and iii. Process feed rate data (tons per hour).	Each test run must be at least 1 hour in duration. (1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each binder, or additive, in the product; and the process feed rate; and (2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; and (3) Calculate and record the maximum allowable organic HAP processing rate as 110 percent of the average of the processing rates for the three test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
<p>4. Each continuous process unit that is subject to the THC emission limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.</p>	<p>c. Record the operating temperature of the affected source.</p> <p>a. Measure THC concentrations at the outlet of the control device or in the stack.</p> <p>b. Measure oxygen concentrations at the outlet of the control device or in the stack.</p> <p>c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.</p> <p>d. Determine the 3-hour block average THC emission concentration, corrected to 18 percent oxygen.</p>	<p>Process data</p> <p>i. Method 25A of 40 CFR Part 60, appendix A.</p> <p>i. Method 3A of 40 CFR Part 60, appendix A.</p> <p>i. Equation 1 of § 63.9800(g)(1); and ii. The 1-minute THC and oxygen concentration data.</p> <p>The hourly average concentration of THC, corrected to 18 percent oxygen, for each test run.</p>	<p>During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.</p> <p>(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.</p> <p>(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.</p> <p>(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).</p> <p>Calculate the 3-hour block average THC emission concentration, corrected to 18 percent oxygen, as the average of the hourly average THC emission concentrations, corrected to 18 percent oxygen.</p>
<p>5. Each continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.</p>	<p>a. Measure THC concentrations at the inlet and outlet of the control device.</p> <p>b. Determine the hourly THC mass emissions rates at the inlet and outlet of the control device.</p> <p>c. Determine the 3-hour block average THC percentage reduction.</p>	<p>i. Method 25A of 40 CFR part 60, appendix A.</p> <p>i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.</p> <p>i. The hourly THC mass emissions rates at the inlet and outlet of the control device.</p>	<p>(1) Each minute, measure and record the concentrations of THC at the inlet and outlet of the control device; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC at the control device inlet and outlet.</p> <p>Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.</p> <p>(1) Calculate the hourly THC for each hour of the performance test using Equation 2 of § 63.9800(g)(1); and (2) Calculate the 3-hour block average THC percentage reduction.</p>
<p>6. Each continuous process unit that is equipped with a thermal oxidizer.</p>	<p>a. Establish the operating limit for the minimum allowable thermal oxidizer combustion chamber temperature.</p>	<p>i. Continuous recording of the output of the combustion chamber temperature measurement device.</p>	<p>(1) At least every 15 minutes, measure and record the thermal oxidizer combustion temperature; and (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test; and (4) Calculate the minimum allowable combustion chamber temperature as the average of the combustion chamber temperatures for the three test runs, minus 14 °C (25 °F).</p>
<p>7. Each continuous process unit that is equipped with a catalytic oxidizer.</p>	<p>a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.</p>	<p>i. Continuous recording of the output of the temperature measurement device.</p>	<p>(1) At least every the 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test; and (4) Calculate the minimum allowable catalyst bed inlet temperature as the average of the catalyst bed inlet temperatures for the three test runs, minus 14 °C (25 °F).</p>

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
<p>8. Each affected batch process unit.</p>	<p>a. Perform a minimum of 2 test runs.</p> <p>b. Establish the operating limit for the maximum organic HAP processing rate.</p> <p>c. Record the batch cycle time.</p> <p>d. Record the operating temperature of the affected source.</p>	<p>i. The appropriate test methods specified in items 1, 9, and 10 of this table.</p> <p>ii. Method 311 of 40 CFR part 63, appendix A, OR MSDS, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and</p> <p>iii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and.</p> <p>iii. Batch weight (tons)</p> <p>Process data</p> <p>Process data</p>	<p>(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and</p> <p>(2) Each test run must begin with the start of a batch cycle, except as specified in item 8.a.i.4. of this table; and</p> <p>(3) Each test run must continue until the end of the batch cycle, except as specified in items 8.a.i.4. and 8.a.i.5. of this table; and</p> <p>(4) If you develop an emissions profile, as described in § 63.9802(a)(1), you can limit each test run to the 3-hour peak THC mass emissions period; and</p> <p>(5) If you do not develop an emissions profile, a test run can be stopped, and the results of that run considered complete, if either of the following provisions are met:</p> <p>(i) you measure emissions continuously until at least 3 hours after the affected process unit has reached maximum temperature, AND the hourly average THC mass emissions rate at the outlet of the control device or in the stack has not increased during the 3-hour period since maximum process temperature was reached, AND the applicable emission limit specified in items 6 through 9 of Table 1 to this subpart was met during each of the 3 hours since maximum process temperature was reached, OR,</p> <p>(ii) for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.</p> <p>(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior</p> <p>(2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; and</p> <p>(3) Calculate and record the maximum allowable organic HAP processing as 110 percent of the average of the organic HAP processing rates for the two test runs.</p> <p>Record the total elapsed time from the start to the completion of the batch cycle.</p> <p>Record the operating temperature of the affected source at least once every hour from the start to the completion of the batch cycle.</p>
<p>9. Each batch process unit that is subject to the THC emission limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.</p>	<p>a. Measure THC concentrations at the outlet of the control device or in the stack.</p> <p>b. Measure oxygen concentrations at the outlet of the control device or in the stack.</p> <p>c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.</p>	<p>i. Method 25A of 40 CFR part 60, appendix A.</p> <p>ii. Method 3A of 40 CFR part 60, appendix A.</p> <p>i. Equation 1 of § 63.9800(g)(1); and</p> <p>ii. The 1-minute THC and oxygen concentration data.</p>	<p>(1) Each minute, measure and record concentrations of THC in the exhaust stream; and</p> <p>(2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.</p> <p>(1) Each minute, measure and record concentrations of oxygen in the exhaust stream; and</p> <p>(2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.</p> <p>(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and</p> <p>(2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurement; and</p> <p>(3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).</p>

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
10. Each batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	d. Determine the 3-hour peak THC emissions concentration period for each test run.	The hourly average THC concentrations, corrected to 18 percent oxygen.	Select the period of 3 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, at the control device outlet or in the stack is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, at the control device outlet or in the stack for any other period of 3 consecutive hours during the test run.
	e. Determine the average THC concentration, corrected to 18 percent oxygen, for each test run.	The hourly average THC emission concentrations, corrected to 18 percent oxygen, for the 3-hour peak THC emissions concentration period.	Calculate the average of the hourly average THC concentrations, corrected to 18 percent oxygen, for the 3 hours of the peak THC emissions concentration period for each test run.
	f. Determine the 2-run block average THC concentration, corrected to 18 percent oxygen, for the emission test.	The average THC concentration, corrected to 18 percent oxygen, for each test run.	Calculate the average of the average THC concentrations, corrected to 18 percent oxygen, for the two test runs.
	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the control device inlet and outlet; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the control device inlet and outlet.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour peak THC mass emissions period for each test run.	The hourly THC mass emissions rates at the control device inlet.	Select the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates at the control device inlet is greater than the sum of the hourly THC mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	d. Determine the average THC percentage reduction for each test run.	i. Equation 2 of § 63.9800(g)(2); and ii. The hourly THC mass emissions rates at the control device inlet and outlet for the 3-hour peak THC mass emissions period.	Calculate the average THC percentage reduction for each test run using Equation 2 of § 63.9800(g)(2).
	e. Determine the 2-run block average THC percentage reduction for the emission test.	The average THC percentage reduction for each test run.	Calculate the average of the average THC percentage reductions for the two test runs.
	f. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, measure the oxygen concentration at the inlet to the control device.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Calculate each hourly average oxygen concentration using at least 50 1-minute measurements for each valid hourly average oxygen concentration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
11. Each batch process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes of each entire test run, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; and (3) For each test run, calculate the hourly average combustion chamber temperature for each hour of the 3-hour peak THC emissions concentration period or the 3-hour peak THC mass emissions period, as defined in § 63.9824, whichever applies; and (4) Calculate the average combustion chamber temperature for the applicable 3-hour peak emissions period for each test run using the average hourly combustion chamber temperatures for the applicable 3-hour peak emissions period; and (5) Calculate the minimum allowable thermal oxidizer combustion chamber operating temperature as the average of the average combustion chamber temperatures for the applicable 3-hour peak emissions period for the two test runs, minus 14 °C (25 °F).
12. Each batch process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes of each entire test run, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) For each test run, calculate the hourly average catalyst bed inlet temperature for each hour of the 3-hour peak THC emissions concentration period or the 3-hour peak THC mass emissions period, as defined in § 63.9824, whichever applies; and (4) Calculate the average catalyst bed inlet temperature for the applicable 3-hour peak emissions period for each test run using the average hourly catalyst bed inlet temperatures for the applicable 3-hour peak emissions period; and (5) Calculate the minimum allowable catalyst bed inlet operating temperature as the average of the average catalyst bed inlet temperatures for the applicable 3-hour peak emissions period for the two test runs, minus 14 °C (25 °F).

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
13. Each batch process unit that is equipped with a thermal or catalytic oxidizer.	a. During each test run, maintain the applicable operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.	(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if you do not use an emissions profile to limit testing to the 3-hour peak THC mass emissions period, as specified in item 8.a.i.4. of this table; (2) At least 3 hours have passed since the affected process unit reached maximum temperature; and (3) The applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was met during each of the previous three 3-hour periods; and (4) The hourly average THC mass emissions rate at the control device inlet did not increase during the 3-hour period that immediately preceded the oxidizer temperature reduction; and (5) The THC concentration at the oxidizer inlet did not exceed 20 ppmvd, corrected to 18 percent oxygen, during each of the four 15-minute periods immediately following the oxidizer temperature reduction; and (6) If the THC concentration exceeded 20 ppmvd, corrected to 18 percent oxygen, during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; and (7) Continue the test run until the THC concentration at the oxidizer inlet is no more than 20 ppmvd, corrected to 18 percent oxygen, for at least four consecutive 15-minute periods that immediately follow the oxidizer temperature reduction.
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCL. b. Perform a minimum of 3 test runs.	i. Method 26A of 40 CFR part 60, appendix A; or 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A. The appropriate test methods specified in items 1 and 14.a. of this table.	(1) Conduct the test while the kiln is operating at the maximum production level and is processing the refractory product with the highest uncalcined clay processing rate, as specified in item 15.a. of this table; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (e.g., HF or HCL dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA. Each test run must be at least 1 hour in duration.
15. Each new continuous kiln that is subject to the production-based HF and HCL emission limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Record the uncalcined clay processing rate. b. Determine the HF mass emissions rate at the outlet of the control device or in the stack.	i. Production data; and ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test. i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Record the production rate (tons per hour of fired product); and (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run. Calculate the HF mass emissions rate for each test run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the 3-hour block average production-based HF emissions rate.	i. The HF mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HF emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HF emissions rate as the average of the hourly production-based HF emissions rates for each test run.
	d. Determine the HCL mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCL mass emissions rate for each test run.
	e. Determine the 3-hour block average production-based HCL emissions rate.	i. The HCL mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HCL emissions rate for each test run using Equation 3 of § 63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HCL rate as the average of the production-based HCL emissions rates for each test run.
16. Each new continuous kiln that is subject to the HF and HCL percentage reduction limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Measure the HF mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rates at the control device inlet and outlet for each test run.
	b. Determine the 3-hour block average HF percentage reduction.	i. The HF mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HF percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HF percentage reduction as the average of the HF percentage reductions for each test run.
	c. Measure the HCL mass emissions rates at the inlet and outlet control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	Calculate the HCL mass emissions rates at the control device inlet and outlet for each test run.
	d. Determine the 3-hour block average HCL percentage reduction.	i. The HCL mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HCL percentage reduction using Equation 2 of § 63.9800(g)(2); and (2) Calculate the 3-hour block average HCL percentage reduction as the average of HCL percentage reductions for each test run.
17. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCL at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A	(1) Conduct the test while the kiln is operating at the maximum production level and is processing the refractory product with the highest uncalcined clay processing rate, as specified in item 15.a. of this table; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (e.g., HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	<p>b. Perform a minimum of 2 test runs.</p> <p>c. Determine the hourly HF and HCl mass emissions rates at the inlet and outlet of the control device.</p> <p>d. Determine the 3-hour peak HF mass emissions period.</p> <p>e. Determine the 2-run block average HF percentage reduction for the emissions test.</p> <p>f. Determine the 2-run block average HCl percentage reduction for the emission test.</p>	<p>i. The appropriate test methods specified in items 1 and 17.a. of this table.</p> <p>i. The appropriate test methods specified in items 1 and 71.a. of this table.</p> <p>The hourly HF mass emissions rates at the inlet of the control device.</p> <p>i. The hourly average HF emissions rates at the inlet and outlet of the control device.</p> <p>i. The hourly average HCl emissions rates at the inlet and outlet of the control device.</p>	<p>(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and</p> <p>(2) Each test run must consist of a series of 1-hour runs at the inlet and outlet of the control device, beginning with the start of a batch cycle, except as specified in item 17.b.i.4. of this table; and</p> <p>(3) Each test run must continue until the end of the batch cycle, except as specified in item 17.b.i.4. of this table; and</p> <p>(4) If you develop an emissions profile, as described in § 63.9802(a)(2), you can limit each test run to the 3-hour peak HF mass emissions period.</p> <p>Determine the hourly mass HF and HCl emissions rates at the inlet and outlet of the control device for each hour of each test run.</p> <p>Select the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates at the control device inlet is greater than the sum of the hourly HF mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.</p> <p>(1) Calculate the HF percentage reduction for each hour of the 3-hour peak HF mass emissions period using Equation 2 of § 63.9800(g)(2); AND</p> <p>(2) Calculate the average HF percentage reduction for each test run as the average of the hourly HF percentage reductions for the 3-hour peak HF mass emissions period for that run; and</p> <p>(3) Calculate the 2-run block average HF percentage reduction for the emission test as the average of the average HF percentage reductions for the two test runs.</p> <p>(1) Calculate the HCl percentage reduction for each hour of the 3-hour peak HF mass emissions period using Equation 2 of § 63.9800(g)(2); and</p> <p>(2) Calculate the average HCl percentage reduction for each test run as the average of the hourly HCl percentage reductions for the 3-hour peak HF mass emissions period for that run; and</p> <p>(3) Calculate the 2-run block average HCl percentage reduction for the emission test as the average of the average HCl percentage reductions for the two test runs.</p>
18. Each new kiln that is used to process clay refractory products and is equipped with a DLA.	<p>a. Establish the operating limit for the minimum pressure drop across the DLA.</p> <p>b. Establish the operating limit for the limestone feeder setting.</p>	<p>i. Data from the pressure drop measurement device during the performance test.</p> <p>i. Data from the limestone feeder during the performance test.</p>	<p>(1) At least every 15 minutes, measure the pressure drop across the DLA; and</p> <p>(2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and</p> <p>(3) Calculate the hourly average pressure drop across the DLA for each hour of the performance test; and</p> <p>(4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the DLA for the two or three test runs, whichever applies.</p> <p>(1) Establish the limestone feeder setting 1 week prior to the performance test; and</p> <p>(2) Record and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test.</p>

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued
 [As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
19. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	<p>a. Document conformance with specifications and requirements of the bag leak detection system.</p> <p>b. Establish the operating limit for the lime feeder setting.</p>	<p>Data from the installation and calibration of the bag leak detection system.</p> <p>i. Data from the lime feeder during the performance test.</p>	<p>Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.</p> <p>(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; and</p> <p>(2) Record the feeder setting for the two or three runs, whichever applies.</p> <p>(3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate for the two or three test runs, whichever applies.</p>
20. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	<p>a. Establish the operating limit for the minimum scrubber pressure drop.</p> <p>b. Establish the operating limit for the minimum scrubber liquid pH.</p> <p>c. Establish the operating limit for the minimum scrubber liquid flow rate.</p> <p>d. If chemicals are added to the scrubber liquid, establish the operating limit for the minimum scrubber chemical feed rate.</p>	<p>i. Data from the pressure drop measurement device during the performance test.</p> <p>i. Data from the pH measurement device during the performance test.</p> <p>i. Data from the flow rate measurement device during the performance test.</p> <p>i. Data from the chemical feed rate measurement device during the performance test.</p>	<p>(1) At least every 15 minutes, measure the pressure drop across the scrubber; and</p> <p>(2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and</p> <p>(3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and</p> <p>(4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.</p> <p>(1) At least every 15 minutes, measure scrubber liquid pH; and</p> <p>(2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; and</p> <p>(3) Calculate the hourly average pH values for each hour of the performance test; and</p> <p>(4) Calculate and record the minimum liquid pH as the average of the hourly average pH measurements for the two or three test runs, whichever applies.</p> <p>(1) At least every 15 minutes, measure the scrubber liquid flow rate; and</p> <p>(2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and</p> <p>(3) Calculate the hourly average liquid flow rate for each hour of the performance test; and</p> <p>(4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.</p> <p>(1) At least every 15 minutes, measure the scrubber chemical feed rate; and</p> <p>(2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; and</p> <p>(3) Calculate the hourly average chemical feed rate for each hour of the performance test; and</p> <p>(4) Calculate and record the minimum chemical feed rate as the average of the hourly average chemical feed rates for the two or three test runs, whichever applies.</p>

■ 12. Table 5 to subpart SSSSS is amended as follows:

- a. Revising items 5 and 6; and
- b. Revising items 10.a and b.

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
*	*	*
5. Each affected batch process unit that is subject to the THC emission concentration limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 2-run block average THC emission concentration for the 3-hour peak THC emissions concentration period measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
6. Each affected batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 2-run block average THC percentage reduction for the 3-hour peak THC mass emissions period measured during the performance test using Method 25A is equal to or greater than 95 percent.
*	*	*
10. Each new batch process kiln that is used to process clay refractory products.	a. The average uncontrolled HF emissions must be reduced by at least 90 percent. b. The average uncontrolled HCl emissions must be reduced by at least 30 percent.	The 2-run block average HF emission reduction for the 3-hour peak HF mass emissions period measured during the performance test is equal to or greater than 90 percent. The 2-run block average HCl emissions reduction for the 3-hour peak HF mass emissions period measured during the performance test is equal to or greater than 30 percent.
*	*	*

■ 13. Table 7 to subpart SSSSS is amended as follows:

- a. Revising item 2;
- b. Revising item 4 by designating the entry in column 3 as item i and adding item 4.ii;

■ c. Revising item 5 by designating the entry in column 3 as item i and adding item 5.ii; and

■ d. Removing item 9.a.ii and redesignating items 9.a.iii and iv as items 9.a.ii and iii, respectively.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
*	*	*
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 7 of this table	Satisfying the applicable requirements specified in items 3 through 7 of this table.
*	*	*
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	i. Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F; and ii. Maintaining the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
5. Each affected process unit that uses process changes to meet the applicable emission limit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	<ul style="list-style-type: none"> i. Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F; and ii. Maintaining the 3-hour block average THC concentration at or below 20 ppmvd, corrected to 18 percent oxygen.
*	*	*

- 14. Table 8 to subpart SSSSS is amended as follows:
 - a. Revising item 4.iii and adding item 4.iv;
 - b. Revising item 7.iv and adding item 7.v;
 - c. Revising items 8 and 8.i through v and adding items 8.vi through viii;
 - d. Revising items 9 and 9.i through iv, redesignating items 9.v and vi as items 9.viii and ix, respectively, and adding items 9.v. through vii;
 - e. Revising items 11.a.ii and iii, adding item 11.a.iv, removing item 11.b, and redesignating items 11.c and d as items 11.b and c, respectively; and
 - f. Revising items 13.a.ii and iii, 13.b.ii and iii, 13.c.ii and iii, and 13.d.ii and iii, and adding items 13.a.iv, 13.b.iv, 13.c.iv, and 13.d.iv.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. Each affected continuous process unit	a. Maintain process operating parameters within the limits established during the most recent performance test.	<ul style="list-style-type: none"> iii. Maintaining the 3-hour block average organic HAP processing rate at or below the maximum allowable organic HAP processing rate established during the most recent performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average organic HAP processing rate that exceeds the maximum allowable organic HAP processing rate established during the most recent performance test
*	*	*
7. Each affected batch process unit	a. Maintain process operating parameters within the limits established during the most recent performance test.	<ul style="list-style-type: none"> iv. Maintaining the organic HAP processing rate at or below the maximum allowable organic HAP processing rate established during the most recent performance test; and v. Reporting, in accordance with § 63.9814(e), any organic HAP processing rate that exceeds the maximum allowable organic HAP processing rate established during the most recent performance test.
*	*	*

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
8. Batch process units that are equipped with a thermal oxidizer.	Maintain the hourly average temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test.	<ul style="list-style-type: none"> i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes throughout any period during which the thermal oxidizer is required to be in operation; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature for any period during which the thermal oxidizer is required to be in operation; and iii. Except as permitted by item 8.iv of this table, maintaining throughout the entire batch cycle the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test; and iv. If complying with the provisions for reducing the thermal oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfying the requirements of items 8.vi. through 8.viii. of this table; and v. Reporting, in accordance with § 63.9814(e), any temperature measurements below the minimum allowable thermal oxidizer combustion chamber temperature established during the most recent performance test. vi. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintaining the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; vii. From the time when the batch process unit reaches its maximum temperature, maintaining the thermal oxidizer combustion chamber temperature at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 11 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the thermal oxidizer temperature reduction during the most recent performance test; viii. For the remainder of the batch process cycle, maintaining the thermal oxidizer combustion chamber temperature at or above the reduced thermal oxidizer temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
9. Batch process units that are equipped with a catalytic oxidizer.	Maintain the hourly average temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established during the most recent performance test.	<ul style="list-style-type: none"> <li data-bbox="1057 310 1508 426">i. Measuring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes throughout any period during which the catalytic oxidizer is required to be in operation; and <li data-bbox="1057 432 1508 527">ii. Calculating the hourly average temperature at the catalyst bed inlet for any period during which the catalytic oxidizer is required to be in operation; and <li data-bbox="1057 533 1508 716">iii. Except as specified in items 9.a.iv through 9.a.vii of this table, maintaining throughout the entire batch cycle the hourly average operating temperature at the catalyst bed inlet at or above the minimum allowable performance allowable operating temperature established during the most recent performance test; and <li data-bbox="1057 722 1508 837">iv. If complying with the provisions for reducing the catalytic oxidizer operating temperature, as specified in item 13 of Table 4 to this subpart, satisfying the requirements of items 9.a.v. through 9.a.vii. of this table; and <li data-bbox="1057 844 1508 1026">v. From the start of the batch cycle until the batch process unit reaches its maximum temperature, maintaining the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and <li data-bbox="1057 1033 1508 1337">vi. From the time when the batch process unit reaches its maximum temperature, maintaining the temperature at the inlet of the catalyst bed at or above the minimum allowable temperature established during the most recent performance test, as determined according to item 12 of Table 4 to this subpart, for a length of time that equals or exceeds the length of time between the process unit reaching its maximum temperature and the start of the catalytic oxidizer temperature reduction during the most recent performance test; and <li data-bbox="1057 1344 1508 1505">vii. For the remainder of the batch process cycle, maintaining the temperature at the inlet of the catalyst bed at or above the reduced catalyst bed inlet temperature established during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and <li data-bbox="1057 1512 1508 1646">viii. Reporting, in accordance with § 63.9814(e), any catalyst bed inlet temperature measurements below the minimum allowable bed inlet temperature measured during the most recent performance test; and <li data-bbox="1057 1652 1508 1766">ix. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

[As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:]

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	d. If chemicals are added to the scrubber liquid, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the minimum scrubber chemical feed rate established during the most recent performance test.	* * * ii. Calculating the hourly average scrubber chemical feed rate; and iii. Maintaining the 3-hour block average scrubber chemical feed rate at or above the scrubber minimum scrubber chemical feed rate established during the most recent rate for each performance test; and iv. Reporting, in accordance with § 63.9814(e), any 3-hour block average scrubber chemical feed rate below the minimum chemical feed rate established during the most recent performance test
*	*	*

■ 15. Table 10 to subpart SSSSS is amended by revising item 1 to read as follows:

TABLE 10 TO SUBPART SSSSS OF PART 63.—REQUIREMENTS FOR REPORTS
 [As stated in § 63.9814, you must comply with the requirements for reports in the following table:]

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(a) through (f)	Semiannually according to the requirements in § 63.9814(b)
*	*	*

■ 16. Table 11 to subpart SSSSS is amended as follows:
 ■ a. Revising citation § 63.4;

■ b. Adding citations § 63.6(i)(15) and (16);
 ■ c. Revising citation § 63.7(b)(2);

■ d. Revising citation § 63.7(e)(3); and
 ■ e. Revising citations § 63.8(c)(1)(i), (ii), and (iii).

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS
 [As stated in § 63.9820, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.4	Prohibited Activities	Compliance date; circumvention; fragmentation	Yes.
§ 63.6(i)(15)	[Reserved].		
§ 63.6(i)(16)	Administrator's authority	Granting extension does not abrogate Administrator's authority.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling ..	Must notify Administrator as soon as is practicable and provide rescheduled date.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs for at least the time specified in the relevant standard; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources; Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain CMS in accordance with § 63.6(e)(1)	Yes.
§ 63.8(c)(1)(ii) ...	Spare Parts for CMS	Must maintain spare parts for routine CMS repairs	Yes.
§ 63.8(c)(1)(iii) ..	SSMP for CMS	Must develop and implement SSMP for CMS	Yes.

[FR Doc. 06-1218 Filed 2-10-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 030221039-6029-27; I.D. 020606D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen for 15 days in an area southeast of Portland, ME, totaling approximately 886 nm² to 1,569 nm² (3,039 km² to 5,382 km²), depending on the temporal and spatial overlap with two other DAM zones currently in effect. The two other overlapping DAM zones are in effect from 0001 hours February 3, 2006 through 2400 hours February 17, 2006, and from 0001 hours February 10, 2006, through 2400 hours February 24, 2006. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 15, 2006, through 2400 hours March 1, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to

identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 2, 2006, an aerial survey reported a sighting of seven right whales in the proximity 42° 59' N. lat. and 69° 26' W. long. This position lies southeast of Portland, ME. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it is modified in the manner described in this temporary rule.

The DAM zone overlaps with two other DAM zones: one in effect from 0001 hours February 3, 2006, through 2400 hours February 17, 2006 (71 FR 5180, February 1, 2006), and the other in effect from 0001 hours February 10, 2006, through 2400 hours February 24, 2006 (70 FR 6396, February 8, 2006). Effective from 0001 hours February 15, 2006 through 2400 hours February 17, 2006, the DAM zone is bounded by the following coordinates when it overlaps these previously established DAM zones:

43° 18' N., 69° 53' W. (NW Corner)
 43° 18' N., 69° 15' W.
 42° 49' N., 69° 15' W.
 42° 49' N., 68° 58' W.
 42° 39' N., 68° 58' W.
 42° 39' N., 69° 32' W.
 43° 00' N., 69° 32' W.
 43° 00' N., 69° 53' W.