

**§ 200.12 [Amended]**

■ 3. Section 200.12(a)(2) is amended by removing the words “adequate yearly progress” and the parentheses around the word “AYP”.

■ 4. Section 200.42 is amended by adding a new paragraph (b)(5) to read as follows:

**§ 200.42 Corrective action.**

\* \* \* \* \*

(b) \* \* \*

(5) Continue to comply with

§ 200.39(c).

\* \* \* \* \*

■ 5. Section 200.43 is amended by:

■ A. Adding a new paragraph (b)(5).

■ B. In paragraph (c)(1)(i), removing the word “and” at the end of the paragraph.

■ C. In paragraph (c)(1)(ii), removing the punctuation “.” and adding, in its place, the words “; and” at the end of the paragraph.

■ D. Adding a new paragraph (c)(1)(iii).

The additions read as follows:

**§ 200.43 Restructuring.**

\* \* \* \* \*

(b) \* \* \*

(5) Continue to comply with

§ 200.39(c).

(c) \* \* \*

(1) \* \* \*

(iii) Continue to comply with

§ 200.39(c).

\* \* \* \* \*

■ 5. Section 200.48(a)(2)(iii)(B) is amended by removing the word “The” at the beginning of the paragraph and adding, in its place, the words “Except as provided in paragraph (a)(2)(iii)(C) of this section, the”.

Dated: December 18, 2008.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E8-30552 Filed 12-22-08; 8:45 am]

**BILLING CODE 4000-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2008-0154; FRL-8755-4]

RIN 2060-AO13

### Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revising the area source category list by changing the name of the ferroalloys production category to clarify that it includes all types of ferroalloys. We are also adding two additional products (calcium carbide and silicon metal) to the source category. EPA is issuing final national emissions standards for control of hazardous air pollutants (HAP) for area source ferroalloys production facilities. The final emissions standards for new and existing sources reflect EPA’s determination regarding the generally available control technology (GACT) or management practices for the source category.

**DATES:** This final rule is effective on December 23, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2008-0154. All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., confidential business information 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Area Source National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production Facilities Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Conrad Chin, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-1512; fax number: (919) 541-3207; e-mail address: [chin.conrad@epa.gov](mailto:chin.conrad@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Outline

The information in this preamble is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document?
  - C. Judicial Review
- II. Background Information for This Final Rule
- III. Revision to the Source Category List
- IV. Summary of Major Changes Since Proposal
- V. Summary of Final Standards
  - A. Do these final standards apply to my source?
  - B. When must I comply with these standards?
  - C. What are the final standards?
  - D. What are the initial and subsequent testing requirements?
  - E. What are the monitoring requirements?
  - F. What are the notification, recordkeeping, and reporting requirements?
  - G. What are the title V permit requirements?
- VI. Summary of Comments and Responses
  - A. Electrometallurgical Operation VE Limit
  - B. Furnace Building Opacity Limit
  - C. Daily VE Inspections
  - D. Activities Subject to the GACT Rule
- VII. Impacts of the Final Standards
- VIII. 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 (UMRA)
  - 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 and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act

#### I. General Information

##### A. Does this action apply to me?

The regulated categories and entities potentially affected by this final rule include:

| Category  | NAICS code <sup>1</sup> | Examples of regulated entities                           |
|---|-------------------------|--|
| Industry:   |                         |  |
| Electrometallurgical Ferroalloy Product Manufacturing .....                     | 331112                  | Area source facilities that manufacture ferroalloys.     |
| Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum). | 331419                  | Area source facilities that manufacture silicon metal.   |
| All Other Basic Inorganic Chemical Manufacturing .....                          | 325188                  | Area source facilities that manufacture calcium carbide. |

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this final action, you should examine the applicability criteria in 40 CFR 63.11524 of subpart YYYYYY (NESHAP for Area Sources: Ferroalloys Production Facilities). If you have any questions regarding the applicability of this final action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

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

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

#### *C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 23, 2009. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such

objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

#### **II. Background Information for This Final Rule**

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

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "30 urban HAP." Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We implemented these requirements through the Strategy and subsequent updates to the source category list. The ferroalloys production source category was listed pursuant to section 112(c)(3) for its contributions toward meeting the 90 percent

requirement of chromium compounds, manganese compounds, and nickel compounds.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technology [GACT] or management practices by such sources to reduce emissions of hazardous air pollutants." As explained in the preamble to the proposed NESHAP, we are issuing standards based on GACT.

We are issuing these final national emission standards for ferroalloys production area sources in response to a court-ordered deadline that requires EPA to issue standards for one source category listed pursuant to section 112(c)(3) and (k) by December 15, 2008 (*Sierra Club v. Johnson*, no. 01–1537, D.D.C., March 2006).

#### **III. Revision to the Source Category List**

This final rule announces a revision to the area source category list developed under our Integrated Urban Air Toxics Strategy pursuant to CAA section 112(c)(3). The revision includes changing the name of the source category "Ferroalloys Production: Ferromanganese and Silicomanganese" to "Ferroalloys Production Facilities." We are also adding two additional products (calcium carbide and silicon metal) to the source category.<sup>1</sup>

#### **IV. Summary of Major Changes Since Proposal**

We have made three significant changes to the proposed rule based on public comments.

*Electrometallurgical Operation Visible Emissions.* In response to comments, we have increased the level of the allowable accumulated occurrences of visible emissions (VE) from the electrometallurgical operation using EPA Method 22 from 3 percent in a 60-minute observation period to 5 percent in a 60-minute observation period.

*Furnace Building Opacity.* While we have retained the 20 percent opacity limit for the discharge of fugitive particulate matter (PM) emissions from the furnace building containing the

<sup>1</sup> We did not receive any adverse comments on the proposed revisions to the list.

electrometallurgical operations, we have increased the limit of the allowed single 6-minute average above 20 percent from 40 percent to 60 percent.

**Frequency of VE Observations.** Under this final rule, sources that conduct daily visual monitoring of the electric arc furnace (EAF) or other reaction vessel control equipment would be allowed to decrease this frequency to a weekly observation upon achieving 90 consecutive operating days of observation with no presence of any VE noted. If VE is noted after the source converts to a weekly schedule, the source must revert to daily observations for the affected control equipment until it achieves an additional 90 consecutive operating days of observation with no presence of any VE noted. At that point, the source may convert to weekly observations. We have also clarified this final rule to specify that such observations only need to be made on days (or weeks) when the electrometallurgical operations and associated control devices are operating.

## V. Summary of Final Standards

### A. Do these final standards apply to my source?

This final rule (subpart YYYYYY) applies to each existing or new electrometallurgical operation located at an area source that produces silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products. These standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

### B. When must I comply with these standards?

All existing area source facilities subject to this final rule must comply with the rule requirements no later than June 22, 2009. New sources must comply with these final rule requirements on December 23, 2008 or upon startup of the facility, whichever is later.

### C. What are the final standards?

#### 1. Electrometallurgical Operation VE Limit

These final standards establish a limit, as measured by Method 22 (Appendix A-7 of 40 CFR part 60), on the duration of VE from the control device(s) on the electrometallurgical

operations. The Method 22 test is designed to measure the amount of time that any VE are observed during an observation period. The owner or operator must demonstrate that the control device outlet emissions do not exceed 5 percent of accumulated occurrences in a 60-minute observation period. We refer to this as the 5 percent limit throughout this document.

#### 2. Furnace Building Opacity Limit

These final standards establish a limit for fugitive emissions, as determined by Method 9 (Appendix A-4 of 40 CFR part 60), from the furnace building due solely to electrometallurgical operations. The owner or operator must demonstrate that the furnace building emissions do not exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute period per hour for which the average opacity does not exceed 60 percent during the 1-hour observation period. The observation period must include product tapping.

### D. What are the initial and subsequent testing requirements?

#### 1. Electrometallurgical Operations VE Limit

For each control device on an electrometallurgical operation, the owner or operator must conduct an initial Method 22 (Appendix A-7 of 40 CFR part 60) VE test for at least 60 minutes. A semiannual Method 22 test is required thereafter. In the case of a fabric filter control device, emissions would be observed at the monovent or outlet stack(s), as applicable. For ferroalloy facilities using wet scrubbers for PM control, the observations would be conducted at the scrubber outlet stack. For example, scrubber outlet emissions may be directed to a flare or to another combustion source such as a dryer. In this case the outlet of the downstream device or process would be observed.

#### 2. Furnace Building Opacity

In order to demonstrate compliance with the furnace building opacity requirements, the owner or operator must conduct an initial 60-minute (ten 6-minute averages) opacity test for fugitive emissions from the furnace building according to the procedures in § 63.6(h) (subpart A of the 40 CFR part 63 General Provisions) and Method 9 of Appendix A-4 of 40 CFR part 60. The owner or operator must conduct a follow up Method 9 test every 6 months.

In order to provide flexibility to sources and reduce the costs of demonstrating compliance, this final rule allows sources to monitor VE using

a Method 22 test in place of the semiannual Method 9 test. The Method 22 test is successful if no VE are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is more. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is more, then the facility must conduct a Method 9 performance test as soon as possible, but no later than 15 calendar days after the Method 22 test.

### E. What are the monitoring requirements?

For existing ferroalloy facilities, the owner or operator must conduct and record the results of daily visual inspection of the control device outlet on days when the electrometallurgical operation is operating. In the case of a fabric filter, the source would observe the monovent or fabric filter outlet stack(s) for any VE. In the case of a wet scrubber, the source would observe the scrubber outlet stack. Should any of the daily observations reveal any VE, the owner or operator must conduct a Method 22 test as described earlier within 24 hours.

The source would have the option to decrease the frequency of observations from daily to weekly if the source collects at least 90 consecutive operating days of observations with no VE. If, after the source converts to a weekly schedule, any VE is observed, the source must revert to a daily schedule, until another consecutive 90 operating days of data are obtained that demonstrate there was no VE during the period observed. Then, the source may convert to a weekly observation schedule.

The owner or operator of a new electrometallurgical operation equipped with a new fabric filter is required to install and operate a bag leak detection system and prepare a site-specific monitoring plan instead of complying with the daily (or weekly) visual inspection requirements for existing sources. In addition, existing sources have the option of complying with the bag leak detection system requirements as an alternative to the daily (weekly) visual inspections.

In case of bag leak detection system alarm, the source must conduct a visual inspection within 1 hour of the alarm sounding. If the visual monitoring reveals the presence of any VE, the source must conduct a Method 22 test within 24 hours of determining the presence of any VE.

The owner or operator of a new sealed EAF equipped with a wet scrubber must install, operate and maintain a

continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate instead of complying with the daily (weekly) visual inspection requirements. Existing sources have the option of conducting CPMS monitoring in place of the daily (weekly) visual inspection requirements, as well.

When operating a CPMS, if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, the source must conduct visual monitoring of the outlet stack(s) within 1 hour of determining that the 3-hour average parameter value is below the required minimum levels. Manufacturer's specifications will be used to provide the values for normal operation. If the visual monitoring reveals the presence of any VE, the source must conduct a Method 22 test within 24 hours of determining the presence of any VE.

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

The affected new and existing sources are required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 1 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting, including provisions for a startup, shutdown, and malfunction (SSM) plan and reports required by 40 CFR 63.6(e). Each facility is required to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 in the General Provisions. The owner or operator is required to submit the Initial Notification within 120 days after publication of this final rule in the **Federal Register**. The owner or operator is required to submit a Notification of Compliance Status within 90 days after the applicable compliance date to demonstrate initial compliance with this final rule.

In addition to the records required by 40 CFR 63.10, owners and operators are required to maintain records of all monitoring data including:

- Date, place, and time of the monitoring event
- Person conducting the monitoring
- Technique or method used
- Operating conditions during the activity
- Results, including the date, time, and duration of the period from the time the monitoring indicated a problem to

the time that monitoring indicated proper operation.

*G. What are the title V permit requirements?*

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

**VI. Summary of Comments and Responses**

We received six comments from industry representatives on the proposed rule during the comment period. Sections VI.A. through VI.D. summarize the significant comments and explain our response. Some of the comments we received requested clarification or only addressed minor source-specific issues. These comments are summarized and addressed in a memorandum to the project docket.

*A. Electrometallurgical Operation VE Limit*

*Comment:* Some commenters suggested that this final rule should allow a 5 percent accumulation of VE at the control device outlet instead of the proposed 3 percent limit. Some commenters disagreed with using data from the cement kiln industry to select a 3 percent VE limit for furnace or reaction vessel emissions (emitted from a baghouse or scrubber).<sup>2</sup> Instead, they said the limit should be comparable to the maximum achievable control technology (MACT) standard for baghouse emissions of "35 milligrams per dry standard cubic meter, or 0.015 grains per dry standard cubic foot (gr/dscf)" (40 CFR 63.1652(a)). The commenters added that 5 percent VE translates to a 3-minute accumulation period, vs. a 1.8-minute accumulation period at 3 percent, which is more practical to implement.

*Response:* As described at proposal, we determined that GACT is either a well controlled baghouse or wet scrubber, which is correlated with low particulate concentration in the exhaust gas. We selected 3 percent as the proposed VE limit instead of stack sampling to minimize the burden of compliance demonstration. However, we agree with commenters that a 5 percent accumulation is more practical

to implement and, as such, is GACT. Because this change will not have a significant impact on emissions and will be simpler to implement, we are changing this final rule to allow a 5 percent accumulation.

*B. Furnace Building Opacity Limit*

*Comment:* Commenters argued that the proposed furnace building opacity limit is too restrictive in terms of the proposed upper bound of 40 percent for no more than one 6-minute period during the 60-minute observation period. Commenters provided additional information that some sources have existing permits that allow excursions up to 60 percent. For example, one ferrosilicon manufacturing facility is subject to a range of opacity limits depending on the operation being observed. Commenters also noted that some of the rules that EPA referenced in the proposed GACT determination were not for ferroalloys operations. They suggested that EPA should look to States like Kentucky and Ohio that have ferroalloys-specific rules and are based on a 60 percent upper limit.

*Response:* We agree with the commenters that there is evidence that the GACT for the 1-minute excursion level is 60 percent. In response to comments, we reviewed the permit limits for existing ferroalloys production area sources and found a range of allowed excursion levels ranging from 0 to 60 percent. We also looked at State rules in those States that have existing ferroalloys production sources. All had baseline opacity limits of 15 to 20 percent, and all allowed excursions of 40 to 60 percent or specified conditions that could be excluded from the observation. In the case of New York, there is a provision for the source to petition for an alternative limit. Therefore, based on existing permit requirements and relevant State regulations, we believe that a single 6-minute excursion level of 60 percent is GACT for this category. Because sources are, in fact, operating up to an excursion level of 60 percent, and this level presumably accounts for different normal operating conditions, we are making the change requested by the commenter.

*C. Daily VE Inspections*

The proposed rule required sources to conduct daily visual monitoring of the monovalent or control device outlet stack(s) for any VE.

*Comment:* Some commenters said this final rule does not allow for any deviation from daily visible inspections of all control device outlets, even if the equipment is not operating. Some

<sup>2</sup> In the proposal preamble (73 FR 53169, September 15, 2008) we cited an example of a test at a wet cement kiln with a fabric filter that showed when outlet concentrations were less than 0.009 gr/dscf, opacity was less than 2 percent.

commenters also suggested a step-down process similar to that found in other programs, where in the absence of noting emissions during daily observations over a specified time period (e.g., one month), the source could step down to weekly observations. They said that this approach is consistent with federal leak detection and repair rules and would reduce the “substantial burden on the affected facilities with no benefit to the environment.”

*Response:* First, we agree with commenters that observations are meaningful only on days when the source equipment (and control device) are operating. This final rule clarifies this point.

Also, based on a closer inspection of existing permit requirements for area sources in this industry, we did find some permits that required either weekly monitoring and/or allowed a step down from daily to weekly. While we estimate that the overall burden associated with the monitoring requirement is minimal, we are also sensitive to the fact that these are generally operations with a small number of staff with many other responsibilities. The intent of the VE inspection is to have ongoing assurance that the control device is operating properly. We are comfortable that a demonstration that shows good performance over at least 90 consecutive operating days, followed by weekly inspections, is sufficient for the type of controls (generally baghouses) used in this industry. Therefore we are changing this final rule to include a provision for stepped down observations after demonstrating good ongoing performance. Should a source subsequently observe VE on a weekly schedule, the source would have to revert to a daily schedule until another 90-day block of observations could be used to justify returning to a weekly schedule.

*Comment:* Another commenter said that the initial and semi-annual observations are “entirely adequate” to show compliance with the proposed standards. The commenter said area sources do not have the resources to send out personnel on a daily basis during operations to perform observations, nor should the same be required as a GACT standard or work practice. They added that title V does not require daily monitoring of any parameter.

*Response:* We disagree with the commenter that an initial and semi-annual observation alone provides sufficient assurance of compliance with the VE limit. While this final rule

exempts sources from the title V permit requirement if the source is otherwise not subject to title V, we note that part of the basis for the exemption is that subjecting sources to the permit requirement would not lead to better monitoring and enforceability. PM control device monitoring provisions have historically been based on the use of either continuous opacity monitoring, bag leak detection, or parametric monitoring (e.g., pressure drop). Parametric monitoring requirements may be continuous, or, in some cases, daily in the form of a meter reading. With this final rule, we have replaced such requirements with daily VE monitoring that we believe provide data indicative of a well operated and maintained control device. In addition, the daily VE observation we require should not take more than 5 minutes, a burden we deem as minimal. As discussed above, we have provided the opportunity to reduce the frequency of such monitoring to weekly, but believe this is the minimum frequency that would demonstrate ongoing compliance. A facility always has the option to install the bag leak detection system or CPMS in lieu of the daily VE monitoring.

#### *D. Activities Subject to the GACT Rule*

*Comment:* Some commenters disagreed with our contention in the proposal preamble that blowing taps, poling, and oxygen lancing should be considered upsets or malfunctions and handled under the General Provisions SSM provisions. One commenter added that requiring an area source to treat a blowing tap or other operation associated with tapping as events that would require reporting to the administrative agency through an SSM plan adds unnecessary regulatory burden.

*Response:* We have reviewed our statements in the proposal preamble that such events should be treated under a source’s SSM plan. Upon further discussions with the commenters we realized that some events such as poling can be quite frequent (e.g., daily), and may be difficult to define for all operations and product types. It was a mischaracterization on our part to imply that all such events are always malfunctions. We did not intend to require that sources include these events in their SSM plan such that the result would be daily reports of events that are not actual malfunctions. The content of the SSM plan is left to the discretion of the source and this final rule does not specify that such events should be included in a plan.

*Comment:* Commenters contended that blowing taps, poling, and oxygen lancing should be exempted from the area source GACT rule. They noted that such events are exempt from the ferroalloys MACT opacity standard (40 CFR 63.1653(b)) and requested that EPA provide the same exemption for area sources.

*Response:* We note that blowing taps, poling, and oxygen lancing activities emit the same urban HAP for which the source category was listed under section 112(c)(3). As we explained in the proposed rule, we listed the ferroalloys production area source category under section 112(c)(3) because we needed the category to meet the section 112(c)(3) 90 percent requirement for emissions of chromium compounds, manganese compounds, and nickel compounds. The record adequately supports and the commenters do not question that there are HAP emissions related to poling, oxygen lancing, and blowing taps, and that these emissions are from emission points in this source category. Because poling, oxygen lancing, and blowing taps emit chromium compounds, manganese compounds, and nickel compounds, we are appropriately setting standards for these activities in this GACT rule.

Based on discussions with the commenters, they indicated that they can meet the furnace building opacity standard without resorting to such exemptions. The availability of the increased excursion level provides a level of operation that does not require an exemption of the activities discussed above.<sup>3</sup> In fact, the purpose of the excursion level is to address variable operations and/or emissions. Because we believe that all companies can meet the opacity limit with the revised 60 percent excursion level, we do not believe an exemption of blowing taps, poling, and oxygen lancing events to be appropriate, since these events are HAP-emitting normal operations.

Finally, we have established that the controls required under this final rule are generally available within the source category. As more thoroughly discussed in the proposal and in Section IV (Summary of Major Changes Since Proposal), above, we have assessed the control technologies currently in place in this source category, reviewed the economics of this industry, and identified low cost methods to assure that HAP are well controlled. As described above, none of the commenters objected to the feasibility of

<sup>3</sup> See docket memos dated October 22, 2008 that summarize discussions with commenters on this topic.

meeting the building opacity limit, and none said it was prohibitive in cost or otherwise not an available technique. In light of the need to meet the requirements of section 112(c)(3) and the record basis for saying the control measures required today are generally available, we have decided to retain coverage of blowing taps, poling, and oxygen lancing. There is additional discussion on our decision to regulate these activities in the docket memorandum.

## VII. Impacts of the Final Standards

Affected sources are well-controlled and our GACT determination reflects such controls. Compared to the early 1990s when we evaluated this industry as part of the development of the major source rule, we believe that sources have improved their level of control and reduced emissions due to State permitting requirements or actions taken to improve efficiency and/or reduce costs. For example, sources have reported improved capture of tapping emissions, improved process controls that minimize upset conditions, and installed improvements in fabric filter technology such as Goretex® bags. We estimate that the only impact associated with this final rule is for the compliance requirements (monitoring, reporting, recordkeeping and testing), which is estimated to be approximately \$3,600 per facility.

## VIII. Statutory and Executive Order Reviews

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

This final action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

### B. Paperwork Reduction Act

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

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA’s NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the

information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency’s implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP requires ferroalloys production area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records are required to demonstrate compliance with the opacity and VE requirements. The owner or operator of a ferroalloys production facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A), although we have deemed that annual compliance reports are sufficient instead of semiannual reports.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 387 labor hours per year at a labor cost of \$35,662 or approximately \$3,600 per facility. The average annual reporting burden is 26 hours per response, with approximately 3 responses per facility for 10 respondents. There are no capital and operating and maintenance costs associated with this final rule requirements for existing sources. Burden is defined at 5 CFR 1320.3(b).

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

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

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare

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

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 employees for NAICS 331112 and 331419 and less than 1,000 employees for NAICS 325188); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is estimated to impact 10 area source ferroalloys production facilities that are currently operating. We estimate that five of these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities’ cost-to-sales ratio, are expected to be less than 0.02 percent. The costs are so small that the impact is not expected to be significant. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this final rule on small entities. These standards represent practices and controls that are common throughout the ferroalloys production industry. These standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from small businesses in our surveys, consultation with small business representatives on the State and national level, and industry

representatives that are affiliated with small businesses.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This final rule is not expected to impact State, local, or tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

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

#### *E. Executive Order 13132: Federalism*

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

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

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

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

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

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

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

This final action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

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

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

This final rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable VCS. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Methods 9 and 22 in this final rule.

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

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

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule will be effective on December 23, 2008.

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

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

Dated: December 15, 2008.

**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 A—[Amended]**

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



**Subpart YYYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities**

**Applicability and Compliance Dates**

Sec.

- 63.11524 Am I subject to this subpart?  
63.11525 What are my compliance dates?

**Standards, Monitoring, and Compliance Requirements**

- 63.11526 What are the standards for new and existing ferroalloys production facilities?  
63.11527 What are the monitoring requirements for new and existing sources?  
63.11528 What are the performance test and compliance requirements for new and existing sources?  
63.11529 What are the notification, reporting, and recordkeeping requirements?

**Other Requirements and Information**

- 63.11530 What parts of the General Provisions apply to my facility?  
63.11531 Who implements and enforces this subpart?  
63.11532 What definitions apply to this subpart?  
63.11533–63.11543 [RESERVED]  
Table 1 to Subpart YYYYYY of Part 63—  
Applicability of General Provisions to Subpart YYYYYY

**Subpart YYYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities**

**Applicability and Compliance Dates**

**§ 63.11524 Am I subject to this subpart?**

(a) You are subject to this subpart if you own or operate a ferroalloys production facility that is an area source of hazardous air pollutant (HAP) emissions. A ferroalloys production facility manufactures silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces (EAFs) or other reaction vessels.

(b) The provisions of this subpart apply to each existing and new electrometallurgical operation affected source as defined in paragraphs (b)(1) and (b)(2) of this section.

(1) An electrometallurgical operation affected source is existing if you commenced construction or reconstruction of the EAF or other

reaction vessel on or before September 15, 2008.

(2) An electrometallurgical operation affected source is new if you commenced construction or reconstruction of the EAF or other reaction vessel after September 15, 2008.

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

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

**§ 63.11525 What are my compliance dates?**

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by June 22, 2009.

(b) If you start up a new affected source on or before December 23, 2008, you must achieve compliance with the applicable provisions of this subpart by no later than December 23, 2008.

(c) If you start up a new affected source after December 23, 2008, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

**Standards, Monitoring, and Compliance Requirements**

**§ 63.11526 What are the standards for new and existing ferroalloys production facilities?**

(a) You must not discharge to the atmosphere visible emissions (VE) from the control device that exceed 5 percent of accumulated occurrences in a 60-minute observation period.

(b) You must not discharge to the atmosphere fugitive PM emissions from the furnace building containing the electrometallurgical operations that exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 60 percent.

**§ 63.11527 What are the monitoring requirements for new and existing sources?**

(a) *EAF Equipped with Fabric Filters.*

(1) *Visual Monitoring.* You must conduct visual monitoring of the monovent or fabric filter outlet stack(s) for any VE according to the schedule specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(i) *Daily Visual Monitoring.* Perform visual determination of fugitive

emissions once per day, on each day the process is in operation, during operation of the process.

(ii) *Weekly Visual Monitoring.* If no visible fugitive emissions are detected in consecutive daily visual monitoring performed in accordance with paragraph (a)(1)(i) of this section for 90 days of operation of the process, you may decrease the frequency of visual monitoring to once per calendar week of time the process is in operation, during operation of the process. If visible fugitive emissions are detected during these inspections, you must resume daily visual monitoring of that operation during each day that the process is in operation, in accordance with paragraph (a)(1)(i) of this section until you satisfy the criteria of this section to resume conducting weekly visual monitoring.

(2) If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(3) If you own or operate an existing affected source, you may install, operate, and maintain a bag leak detection system for each fabric filter as an alternative to the monitoring requirements in paragraph (a)(1) of this section. If you own or operate a new affected source, you must install, operate, and maintain a bag leak detection system for each fabric filter according to the requirements in paragraphs (a)(3)(i) through (a)(3)(vii) of this section. Such source is not subject to the requirements in paragraphs (a)(1) and (a)(2) of this section.

(i) The system must be certified by the manufacturer to be capable of detecting emissions of PM at concentrations of 10 milligrams per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings and the owner or operator shall continuously record the output from the bag leak detection system using a strip chart recorder, data logger, or other means.

(iii) The system must be equipped with an alarm that will sound when an increase in relative PM loadings is detected over the alarm set point established in the operation and maintenance plan, and the alarm must be located such that it can be heard, seen, or otherwise detected by the appropriate plant personnel.

(iv) The initial adjustment of the system must, at minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and



establishing the alarm set points. If the system is equipped with an alarm delay time feature, you also must establish a maximum reasonable alarm delay time.

(v) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set point, or alarm delay time, except that, once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects including temperature and humidity.

(vi) For fabric filters that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the fabric filter and upstream of any wet scrubber.

(vii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(4) When operating a bag leak detection system, if an alarm sounds, conduct visual monitoring of the monovalent or fabric filter outlet stack(s) as required in paragraph (a)(1) of this section within 1 hour. If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(5) You must prepare a site-specific monitoring plan for each bag leak detection system. You must operate and maintain each bag leak detection system according to the plan at all times. Each plan must address all of the items identified in paragraphs (a)(5)(i) through (a)(5)(v) of this section.

(i) Installation of the bag leak detection system.

(ii) Initial and periodic adjustment of the bag leak detection system including how the alarm set-point and alarm delay time will be established.

(iii) Operation of the bag leak detection system including quality assurance procedures.

(iv) Maintenance of the bag leak detection system including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output will be recorded and stored.

(b) *EAF Equipped with Wet Scrubbers.*

(1) Visual Monitoring. You must conduct visual monitoring of the wet scrubber outlet stack(s) for any VE according to the schedule specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Daily Visual Monitoring.* Perform visual determination of fugitive emissions once per day, on each day the process is in operation, during operation of the process.

(ii) *Weekly Visual Monitoring.* If no visible fugitive emissions are detected

in consecutive daily visual monitoring performed in accordance with paragraph (b)(1)(i) of this section for 90 days of operation of the process, you may decrease the frequency of visual monitoring to once per calendar week of time the process is in operation, during operation of the process. If visible fugitive emissions are detected during these inspections, you must resume daily visual monitoring of that operation during each day that the process is in operation, in accordance with paragraph (b)(1)(i) of this section until you satisfy the criteria of this section to resume conducting weekly visual monitoring.

(2) If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A-7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(3) If you own or operate an existing affected source, you may install, operate and maintain a continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate as an alternative to the monitoring requirements specified in paragraph (b)(1) of this section. If you own or operate a new sealed EAF affected source, you must install, operate, and maintain a CPMS for each wet scrubber. Such source is not subject to the requirements in paragraph (b)(1) of this section.

(4) When operating a CPMS, if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, conduct visual monitoring of the outlet stack(s) as required by paragraph (b)(1) of this section within 1 hour of determining that the 3-hour average parameter value is below the required minimum levels. Manufacturer's specifications for pressure drop and liquid flow rate will be used to determine normal operations. If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A-7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

**§ 63.11528 What are the performance test and compliance requirements for new and existing sources?**

(a) *Initial Compliance Demonstration Deadlines.* You must conduct an initial Method 22 (Appendix A-7 of 40 CFR part 60) test following the requirements of paragraph (b)(1) of this section of each existing electrometallurgical operation control device and an initial Method 9 observation following the requirements of paragraph (c)(1) of this

section from the furnace building due to electrometallurgical operations no later than 60 days after your applicable compliance date. For any new electrometallurgical operation control device, you must conduct an initial Method 22 test following the requirements of paragraph (b)(1) of this section within 15 days of startup of the control device.

**(b) Visible Emissions Limit Compliance Demonstration.**

(1) You must conduct a Method 22 (Appendix A-7 of 40 CFR part 60) test to determine that VE from the control device do not exceed the emission standard specified in § 63.11526(a). For a fabric filter, conduct the test for at least 60 minutes at the fabric filter monovalent or outlet stack(s), as applicable. For a wet scrubber, conduct the test for at least 60 minutes at the outlet stack(s).

(2) You must conduct a semiannual Method 22 test using the procedures specified in paragraph (b)(1) of this section.

**(c) Furnace Building Opacity.**

(1) You must conduct an opacity test for fugitive emissions from the furnace building according to the procedures in § 63.6(h) and Method 9 (Appendix A-4 of 40 CFR part 60). The test must be conducted for at least 60 minutes and shall include tapping the furnace or reaction vessel. The observation must be focused on the part of the building where electrometallurgical operation fugitive emissions are most likely to be observed.

(2) Conduct subsequent Method 9 tests no less frequently than every 6 months and each time you make a process change likely to increase fugitive emissions.

(3) After the initial Method 9 performance test, as an alternative to the Method 9 performance test, you may monitor VE using Method 22 (Appendix A-7 of 40 CFR part 60) for subsequent semi-annual compliance demonstrations. The Method 22 test is successful if no VE are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is longer. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is longer, then the facility must conduct another test as soon as possible, but no later than 15 calendar days after the Method 22 test using Method 9 (Appendix A-4 of 40 CFR part 60) as specified in paragraph (c)(1) of this section.

**§ 63.11529 What are the notification, reporting, and recordkeeping requirements?**

(a) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b)(2) of the General Provisions no later than 120 days after the date of publication of this final rule in the **Federal Register**. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (b)(2)(iv).

(b) *Notification of Compliance Status.* You must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions before the close of business on the 30th day following the completion of the initial compliance demonstration. This notification must include the following:

(1) The results of Method 22 (Appendix A–7 of 40 CFR part 60) test for VE as required by § 63.11528(a);

(2) If you have installed a bag leak detection system, documentation that the system satisfies the design requirements specified in § 63.11527(a)(3) and that you have prepared a site-specific monitoring plan that meets the requirements specified in § 63.11527(a)(5);

(3) The results of the Method 9 (Appendix A–4 of 40 CFR part 60) test for building opacity as required by § 63.11528(a).

(c) *Annual Compliance Certification.* If you own or operate an affected source, you must submit an annual certification of compliance according to paragraphs (c)(1) through (c)(4) of this section.

(1) The results of any daily or weekly visual monitoring events required by § 63.11527(a)(1) and (b)(1), alarm-based visual monitoring at sources equipped with bag leak detection systems as required by § 63.11527(a)(4), or readings outside of the operating range at sources using CPMS on wet scrubbers required by § 63.11527(b)(4).

(2) The results of the follow up Method 22 (Appendix A–7 of 40 CFR part 60) tests that are required if VE are observed during the daily or weekly visual monitoring, alarm-based visual monitoring, or out-of-range operating readings as described in paragraph (c)(1) of this section.

(3) The results of the Method 22 (Appendix A–7 of 40 CFR part 60) or Method 9 (Appendix A–4 of 40 CFR part 60) tests required by § 63.11528(b) and (c), respectively.

(4) If you operate a bag leak detection system for a fabric filter or a CPMS for a wet scrubber, submit annual reports according to the requirements in § 63.10(e) and include summary information on the number, duration, and cause (including unknown cause, if

applicable) for monitor downtime incidents (other than downtime associated with zero and span or other calibration checks, if applicable).

(d) You must keep the records specified in paragraphs (d)(1) through (d)(2) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart and all documentation supporting any Initial Notification, Notification of Compliance Status, and annual compliance certifications that you submitted.

(2) You must keep the records of all daily or weekly visual, Method 22 (Appendix A–7 of 40 CFR part 60), and Method 9 (Appendix A–4 of 40 CFR part 60) monitoring data required by § 63.11527 and the information identified in paragraphs (d)(2)(i) through (d)(2)(v) of this section.

(i) The date, place, and time of the monitoring event;

(ii) Person conducting the monitoring;

(iii) Technique or method used;

(iv) Operating conditions during the activity; and

(v) Results, including the date, time, and duration of the period from the time the monitoring indicated a problem (e.g., VE) to the time that monitoring indicated proper operation.

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

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

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

**Other Requirements and Information****§ 63.11530 What parts of the General Provisions apply to my facility?**

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

**§ 63.11531 Who implements and enforces this subpart?**

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

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A “major change to test method” is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A “major change to monitoring” under is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A “major change to recordkeeping/reporting” is defined in § 63.90.

**§ 63.11532 What definitions apply to this subpart?**

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section.

*Bag leak detection system* means a system that is capable of continuously monitoring relative PM (i.e., dust) loadings in the exhaust of a fabric filter to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, or other effect to monitor relative PM loadings continuously.

*Capture system* means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

*Charging* means introducing materials to an EAF or other reaction vessel, which may consist of, but are not limited to, ores, slag, carbonaceous material, and/or limestone.

*Control device* means the air pollution control equipment used to remove PM from the effluent gas stream generated by an EAF furnace or other reaction vessel.

*Electric arc furnace* means any furnace wherein electrical energy is converted to heat energy by transmission of current between electrodes partially submerged in the furnace charge.

*Electrometallurgical operations* means the use of electric and electrolytic processes to purify metals or reduce metallic compounds to metals.

*Fugitive emissions* means any pollutant released to the atmosphere that is not discharged through a ventilation system that is specifically

designed to capture pollutants at the source, convey them through ductwork, and exhausts them from a control device. Fugitive emissions include pollutants released to the atmosphere through windows, doors, vents, or other building openings. Fugitive emissions also include pollutants released to the atmosphere through other general building ventilation or exhaust systems not specifically designed to capture pollutants at the source.

*Sealed EAF* means a furnace equipped with the cover with seals around the

electrodes and outer edges of the cover to eliminate air being drawn in under the cover.

*Tapping* means the removal of product from the EAF or other reaction vessel under normal operating conditions, such as removal of metal under normal pressure and movement by gravity down the spout into the ladle.

#### **§ 63.11533–63.11543 [Reserved]**

As required in § 63.11530, you must meet each requirement in the following table that applies to you.

TABLE 1 TO SUBPART YYYYYY OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

| Citation          | Subject   |
|-------------------|---|
| 63.1 <sup>1</sup> | Applicability.  |
| 63.2              | Definitions.  |
| 63.3              | Units and abbreviations.  |
| 63.4              | Prohibited activities.  |
| 63.5              | Construction/reconstruction.  |
| 63.6              | Compliance with standards and maintenance.                                  |
| 63.8              | Monitoring.   |
| 63.9              | Notification.   |
| 63.10             | Recordkeeping and reporting.  |
| 63.12             | State authority and delegations.  |
| 63.13             | Addresses of State air pollution control agencies and EPA regional offices. |
| 63.14             | Incorporation by reference.   |
| 63.15             | Availability of information and confidentiality.                            |
| 63.16             | Performance track provisions.   |

<sup>1</sup> § 63.11524(d), “Am I subject to this subpart?” exempts affected sources from the obligation to obtain title V operating permits.

[FR Doc. E8–30424 Filed 12–22–08; 8:45 am]

BILLING CODE 6560–50–P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

[EPA–R10–RCRA–2008–0588; FRL–8755–9]

#### **Idaho: Final Authorization of State Hazardous Waste Management Program Revision**

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

**ACTION:** Final rule.

**SUMMARY:** Idaho applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA). On September 30, 2008, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA–R10–RCRA–2008–0588. On October 28, 2008, EPA published notification of an extension of the comment period for the proposed rule. The comment period closed on November 20, 2008. EPA has decided that the revisions to the Idaho

hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and EPA is authorizing these revisions to Idaho’s authorized hazardous waste management program in this final rule.

**DATES:** *Effective Date:* Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. EST on December 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Nina Kocourek, Mail Stop AWT–122, U.S. EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone (206) 553–6502. E-mail: [kocourek.nina@epa.gov](mailto:kocourek.nina@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under section 3006(b) of RCRA, 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under section 3009, States are not allowed to

impose any requirements which are less stringent than the Federal program. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA’s regulations in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho’s hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). EPA also granted authorization to revisions to Idaho’s program effective on: June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005) and February 26, 2007 (72 FR 8283, February 26, 2007).

This final rule addresses a program revision application that Idaho submitted to EPA in June 2008, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On September 30, 2008, EPA