ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–1018; FRL–8896–7]

RIN 2060–AO41

New Source Performance Standards Review for Nonmetallic Mineral Processing Plants; and Amendment to Subpart UUU Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to the Standards of Performance for Nonmetallic Mineral Processing Plant(s) (NMPP). These final amendments include revisions to the emission limits for NMPP affected facilities which commence construction, modification, or reconstruction on or after April 22, 2008. These final amendments for NMPP also include: Additional testing and monitoring requirements for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008; exemption of affected facilities that process wet material from this final rule; changes to simplify the notification requirements for all affected facilities; and changes to definitions and various clarifications. We are not taking any final action in this document regarding the amendment to the Standards of Performance for Calciners and Dryers in Mineral Industries discussed in the proposed rule.

DATES: This final rule is effective on April 28, 2009.

ADDRESSES: EPA has established a docket for this action which is Docket ID No. EPA–HQ–OAR–2007–1018. All documents in the docket are listed in the *http://www.regulations.gov* index. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Standards of Performance for Nonmetallic Mineral Processing Plants Docket, 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 Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Neuffer; Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Metals and Minerals Group (D243–02); Environmental Protection Agency; Research Triangle Park, NC 27711; telephone number: (919) 541–5435; fax number: (919) 541–3207; e-mail address: *neuffer.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information presented in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by the final amendments to New Source Performance Standards (NSPS) for NMPP (40 CFR part 60, subpart OOO) include:

Category	NAICS code [1]	Examples of regulated entities
Industry	212311	Dimension Stone Mining and Quarrying.
	212312	Crushed and Broken Limestone Mining and Quarrying.
	212313	Crushed and Broken Granite Mining and Quarrying.
	212319	Other Crushed and Broken Stone Mining and Quarrying.
	212321	Construction Sand and Gravel Mining.
	212322	Industrial Sand Mining.
	212324	Kaolin and Ball Clay Mining.
	212325	Clay and Ceramic and Refractory Minerals Mining.
	212391	Potash, Soda, and Borate Mineral Mining.
	212393	Other Chemical and Fertilizer Mineral Mining.
	212399	All Other Nonmetallic Mineral Mining.
	221112	Fossil-Fuel Electric Power Generation.
	324121	Asphalt Paving Mixture and Block Manufacturing.
	327121	Brick and Structural Clay Tile Manufacturing.
	327122	Ceramic Wall and Floor Tile Manufacturing.
	327123	Other Structural Clay Product Manufacturing.
	327124	Clay Refractory Manufacturing.

Category	NAICS code [1]	Examples of regulated entities
	327310	Cement Manufacturing.
	327410	Lime Manufacturing (Dolomite, Dead-burned, Manufacturing).
	327420	Gypsum Product Manufacturing.
	327992	Ground or Treated Mineral and Earth Manufacturing.
Federal government	.....	Not affected.
State/local/tribal government	.....	Not affected.

[1] North American Industrial 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 final action. To determine whether your facility will be regulated by this final action, you should examine the applicability criteria in 40 CFR 60.670 (subpart OOO). If you have any questions regarding the applicability of this final action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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 is 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 *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 June 29, 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 us 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 on Subpart OOO

NSPS implement CAA section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT). Standards of performance for NMPP (40 CFR, subpart OOO) were promulgated in the **Federal Register** on August 1, 1985 (50 FR 31328).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions. The first action taken with respect to the NMPP NSPS was completed on June 9, 1997 (62 FR 31351).

We proposed the current review of the NMPP NSPS on April 22, 2008 (73 FR 21559). We received a total of 26 comments from NMPP, industry trade associations, and State environmental agencies during the comment period. This final rule reflects our consideration of all the comments we received. Detailed responses to the comments not included in this preamble are contained in the Summary of Public Comments and Responses document which is included in the docket for this rulemaking.

III. Summary of the Final Amendments to Subpart OOO and Changes Since Proposal

The NMPP NSPS applies to affected facilities for which construction, modification, or reconstruction commenced on or after August 31, 1983, at plants that process any of the following 18 nonmetallic minerals: Crushed and broken stone, sand and gravel, clay, rock salt, gypsum (natural or synthetic), sodium compounds, pumice, gilsonite, talc and pyrophyllite, boron, barite, fluorospar, feldspar, diatomite, perlite, vermiculite, mica, and kyanite. The affected facilities are each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station.

The final amendments to the NMPP NSPS (subpart OOO of 40 CFR part 60) are summarized in Table 1 of this preamble.

TABLE 1—SUMMARY OF THE FINAL AMENDMENTS TO SUBPART OOO

Citation	Change
§ 60.670(a)(2)	Exempt wet material processing operations; clarify rule does not apply to plants with no crushers or grinding mills.
§ 60.670(d)(1)	Amend to clarify that like-for-like replacements have no emissions increase.
§ 60.670(f)	Revise to conform with amended Table 1 to subpart OOO.
§ 60.671	Add definitions of: Crush or crushing, saturated material, seasonal shut down, and wet material processing operations.
	Amend definition of screening operation to exempt static grizzlies.
	Amend definition of nonmetallic mineral to include gypsum (natural or synthetic).
	Amend definition of storage bin to correct typographical error by changing ''or'' to ''of''.
	Amend definitions of ''capture system'' and ''control device'' to replace the words ''process operations'' with ''affected facilities''.
§ 60.672(a) and (b)	Revise to reference Tables 2 and 3 to subpart OOO and to better match General Provisions language regarding compliance dates. Tables 2 and 3 to subpart OOO contain revised emission limits and testing/monitoring requirements.
§ 60.672(c)	Reserve because superseded by Table 3 to subpart OOO.
§ 60.672(e)	Revise cross-references. Replace Method 22 (40 CFR part 60, Appendix A–7) no visible emissions limit for building openings with 7 percent fugitive opacity limit.
§ 60.672(f) and (g)	Consolidate paragraphs to refer to Table 2 to subpart OOO.
§§ 60.672(h) and 60.675(h)	Remove 60.672(h) and reserve 60.675(h) because wet material processing exempted.
§ 60.674	Renumber (a) and (b) as (a)(1) and (2).
	Add periodic inspections for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, that use wet suppression or rely on water carryover from upstream wet suppression water sprays. Add monitoring requirements for baghouses on affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008 (Method 22 visible emission inspections or use of bag leak detection systems).
	Add paragraph (e) to cite as an alternative the baghouse monitoring requirements in the Lime Manufacturing NESHAP (40 CFR part 63, subpart AAAAA) for processed stone handling operations subject to the NESHAP.
§ 60.675 and various other sections referencing test methods.	Add text to clarify that the required EPA test methods are located in Appendices A–1 through A–7 of 40 CFR part 60 (formerly Appendix A of 60 CFR part 60).
§ 60.675(b)(1)	Cross reference exceptions to Method 5 (40 CFR part 60, Appendix A–3) or Method 17 (40 CFR part 60, Appendix A–6).
§ 60.675(c)	Correct cross reference to amended paragraph in (c)(1).
	Expand (c)(2) into subparagraphs (i) and (ii) to reduce the duration of Method 9 (40 CFR part 60, Appendix A–4) stack opacity observations for storage bins or enclosed truck or railcar loading stations operating for less than 1 hour at a time.
	Revise (c)(3) and delete (c)(4) to make the fugitive Method 9 testing duration 30 minutes and specify averaging time for all affected facilities.
§ 60.675(d)	Specify performance testing requirements for the building fugitive emission limit. Allow prior Method 22 tests showing compliance with the former no visible emissions (VE) limit.
§ 60.675(e)	Add paragraph (e)(2) to allow Method 9 readings to be conducted on three emission points at one time if specified criteria are met.
	Add paragraph (e)(3) to allow Method 5I (40 CFR part 60, Appendix A–3) as an option for determining PM concentration from affected facilities that operate for less than 1 hour at a time.
	Add paragraph (e)(4) to address flow measurement from building vents with low exhaust gas velocity.
§ 60.675(f)	Correct cross references.
§ 60.675(g)	Revise to reduce 30-day advance notification time for Method 9 fugitive performance test to 7 days. Clarify that a wet material processing operation that begins to process unsaturated material becomes subject to the opacity limit at the time processing of unsaturated material begins.
§ 60.675(i)	Add section to state that initial performance test dates that fall during seasonal shut downs may be postponed no later than 60 days after resuming operation (with permitting authority approval).
§ 60.676(b)	Add requirement to previously reserved paragraph (b) for recording periodic inspections of water sprays and baghouse monitoring for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008.
	Add recordkeeping requirements for each affected facility demonstrating compliance with the Lime Manufacturing NESHAP baghouse monitoring requirements.
§ 60.676(d)	Remove reference to upper limits on scrubber pressure and liquid flow rate.
§ 60.676(f) and (g)	Edit to conform to wet material processing exemption and/or relevant opacity limits.
§ 60.676(h)	Delete reference to now reserved 60.7(a)(2). Waive requirement to submit 60.7(a)(1) notification of the date construction or reconstruction commenced.
§ 60.676(k)	Add section to state that notifications and reports need only be sent to the delegated authority (or the EPA Region when there is no delegated authority).
Table 1 to subpart OOO	Move to end of subpart OOO, shorten to include only exceptions to the General Provisions, and update comments.
Table 2 to subpart OOO	Add table to specify the stack PM limits and testing/monitoring requirements for affected facilities based on applicability dates.
Table 3 to subpart OOO	Add table to specify the fugitive opacity limits and testing/monitoring requirements for affected facilities based on applicability dates.

A. What are the final emission limits for NMPP (40 CFR part 60, subpart OOO)?

For affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, the final emission limits are being promulgated as proposed. This final rule requires a particulate matter (PM) emission limit of 0.032 grams per dry standard cubic meter (g/dscm) (0.014 grains per dry standard cubic foot (gr/dscf)), for affected facilities with capture systems [1] (*i.e.*, affected facilities with stack emissions) and eliminates the stack opacity limit for dry control devices. Baghouses that control emissions from only an individual, enclosed storage bin are exempt from the PM limit but must meet a final stack opacity limit of 7 percent. A fugitive emission limit of 7 percent opacity is required for all types of affected facilities with fugitive emissions, except for crushers without capture systems which have a fugitive emission limit of 12 percent opacity. Fugitive emissions [2] can be present when emissions are not captured (*e.g.*, at affected facilities without capture systems) or when the capture system is not completely effective in capturing and transporting emissions to a control device (such as a baghouse or wet scrubber).

The emission limits for affected facilities that commenced construction, modification, or reconstruction before April 22, 2008, remain unchanged. As in the original NSPS, affected facilities with capture systems must meet a stack PM emissions limit of 0.05 g/dscm (0.022 gr/dscf) and affected facilities with fugitive emissions must meet opacity limits of 15 percent (for crushers without capture systems) and 10 percent for all other types of affected facilities with fugitive emissions.

An alternative set of emission limits is available for affected facilities enclosed in buildings. These building emission limits are being promulgated as proposed. Plants must either comply with the emission limits stated above for each affected facility located in the building, or alternatively, comply with the emission limits for the building enclosing the affected facility. The building emission limits are as follows:

- Fugitive emissions from the building openings (except for vents) must not exceed 7 percent opacity; and
- Vents (as defined in § 60.671) in the building must meet the applicable stack emission limits. A building vent PM limit of 0.014 gr/dscf is required if the vent discharges emissions from an affected facility that commenced construction, modification, or reconstruction on or after April 22, 2008. A building vent PM limit of 0.022 gr/dscf and an opacity limit of 7 percent is required if the vent discharges emissions from an affected facility that commenced construction, modification, or reconstruction before April 22, 2008.

B. How is EPA amending subpart OOO applicability and definitions?

Synthetic gypsum. Consistent with the proposal preamble clarification that synthetic gypsum is covered by subpart OOO, we are amending the definition of ''nonmetallic mineral'' to include ''gypsum (natural or synthetic)'' in place of ''gypsum.''

Wet material processing. As proposed, we are adding two definitions and making other amendments to exempt from subpart OOO wet material processing operations that have no potential for PM emissions. Wet material processing operations include: (a) Wet screening operations and subsequent screening operations, bucket elevators and belt conveyors in the production line that process saturated materials up to the first crusher, grinding mill or storage bin in the production line; or (b) screening operations, bucket elevators and belt conveyors in the production line downstream of wet mining operations that process saturated materials up to the first crusher, grinding mill or storage bin in the production line. We also are adding a definition of ''saturated material'' to describe the type of material intended to be exempted from this final rule. Through the definitions of ''wet material processing operation'' and ''saturated material'' (as well as other existing definitions of ''wet mining operation'' and ''wet screening operation''), we are exempting from coverage under subpart OOO mineral material that is wet enough on its surface to remove the possibility of PM emissions being generated from processing of the material through screening operations, bucket elevators and belt conveyors. Material that is wetted solely by wet suppression systems designed to add surface moisture for dust control is not considered to be ''saturated material'' for purposes of this exemption. Examples of saturated material include slurries of water and mineral material, material that is wet as it enters the processing plant from the mine, material that is wet from washing, material with a high percentage moisture (considering mineral type), etc.

Grizzlies. As proposed, we are amending the definition of ''screening operation'' to clarify that all grizzlies associated with truck dumping and static (non-agitating) grizzlies are not subpart OOO affected facilities.

Crushers. We are adding the proposed definition of ''crush or crushing'' which means to reduce the size of nonmetallic mineral material by means of physical impaction of the crusher or grinding mill upon the material. The new definition clarifies that crushers and grinding mills do not include equipment that simply breaks up clumps of material (*e.g.*, certain deagglomerators, slicers or shredders processing material that has become stuck together naturally or during handling/processing) but does not further reduce the size of the material.

C. What are the final testing requirements for subpart OOO?

Subpart OOO requires NMPP to conduct an initial performance test to demonstrate compliance with the relevant stack or fugitive emission limits.

Stack testing. Stack PM emissions are to be measured with EPA Method 5 (40 CFR part 60, Appendix A–3) or Method 17 (40 CFR part 60, Appendix A–6). As proposed, we are adding EPA Method 5I (40 CFR part 60, Appendix A–3)—''Determination of Low Level Particulate Matter Emissions from Stationary Sources'' in § 60.675(e)(3) as an optional test method that can be used instead of Methods 5 or 17. Method 5I is useful for low PM concentration applications, where the total PM catch is 50 milligrams or less. With Method 5I, the sample rate and total gas volume is adjusted based on the estimated grain loading of the emission point and the total sampling time is a function of the estimated mass of PM to be collected for the run. Thus, Method 5I can be used in situations where the minimum sampling volume of 60 dscf (required for Methods 5 and 17) cannot be obtained (*e.g.*, for affected facilities that operate for less than 1 hour at a time such as, but not limited to, storage bins and loading stations).

Stack opacity must be measured with EPA Method 9 (40 CFR part 60, Appendix A–4) for affected facilities with a stack opacity limit. As proposed, we are reducing the Method 9 stack opacity test duration from 3 hours to the duration that the affected facility operates (but not less than 30 minutes) for baghouses that control storage bins or enclosed truck or railcar loading

[1] ''Capture system'' is defined in subpart OOO as ''the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport particulate matter generated by one or more affected facilities to a control device.''

[2] Fugitive emission'' is defined in subpart OOO as ''particulate matter that is not collected by a capture system and is released to the atmosphere at the point of generation.''

stations that operate for less than 1 hour at a time.

Fugitive testing. The opacity from affected facilities with fugitive emissions must be measured with EPA Method 9 (though the duration of Method 9 readings is reduced in some cases as discussed below). As proposed, this final rule requires a 30-minute fugitive Method 9 test duration (five 6-minute averages) for all affected facilities with fugitive emissions. Compliance with the applicable fugitive emissions limit must be based on the average of the five 6-minute averages recorded during the 30 minutes. A single visible emission observer is allowed to conduct observations for up to three subpart OOO emission points at a time (including stack and vent emission points) provided that the three criteria in § 60.675(e)(2) are met. The third criterion was changed from proposal to state that none of the three readings taken during each 15 second period can equal or exceed the applicable standard. If this occurs, the observer must stop taking readings for all three points and focus on the one that equaled or exceeded the applicable standard.

The proposed rule would have required repeat Method 9 performance testing (30-minute test) once every 5 years for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, with fugitive emissions that are controlled by water carryover or other means (*e.g.*, enclosures). This 5-year repeat testing requirement is being promulgated as proposed, except that affected facility fugitive emissions controlled by water carryover from upstream water sprays that are inspected according to the requirements in § 60.674(b) and § 60.676(b) of subpart OOO are exempt from the 5-year repeat testing requirement.

Buildings. Subpart OOO contains an optional compliance method that allows emissions measurement from the building instead of each affected facility within a building. As proposed, we are replacing the former no VE limit and procedure for measuring fugitive emissions from building openings (a 75 minute Method 22 test) with a 7 percent opacity limit measured using a 30-minute EPA Method 9 test. Compliance with the 7 percent opacity limit will be demonstrated through initial testing. Buildings that previously demonstrated compliance with the former Method 22 no VE limit through performance testing are not required to be retested to show compliance with today's Method 9 opacity limit unless an affected facility for which construction, modification, or reconstruction commenced on or after April 22, 2008, is located inside the building.

Seasonal shut downs. As proposed, we are adding § 60.675(i) to subpart OOO to allow plants, with approval from the appropriate permitting authority, to postpone initial performance testing until 60 calendar days after resuming operation following a seasonal shut down of an affected facility. A ''seasonal shut down'' is defined as the ''shut down of an affected facility for a period of at least 45 consecutive days due to weather or seasonal market conditions''.

D. What are the final monitoring requirements for subpart OOO?

Monitoring for fugitive emissions limits. Fugitive emissions from subpart OOO affected facilities are often controlled by wet suppression. In wet suppression systems, water (with or without surfactant) is sprayed on nonmetallic minerals at various locations in the process line but not necessarily at every affected facility. Carryover of water sprayed at affected facilities upstream in the process line is often sufficient to control fugitive emissions from affected facilities downstream in the process. Partial enclosures or other means may also be used to reduce fugitive emissions instead of or in addition to water sprays or water carryover. Subpart OOO does not specify any particular technique for reducing fugitive emissions. Rather, subpart OOO specifies fugitive emission limits that must be met. Continuous compliance requirements for wet suppression systems are addressed in subpart OOO due to the prevalence of wet suppression as a control technique for NMPP.

As proposed, monthly periodic inspections of wet suppression water sprays are required for affected facilities with wet suppression that commence construction, modification, or reconstruction on or after April 22, 2008. The periodic inspections (which are specified in § 60.674(b) and § 60.676(b)) apply for affected facilities with fugitive emissions that are controlled by either: (a) Direct water sprays located at the affected facility, or (b) water carryover from upstream water sprays (for affected facilities exempted from the 5-year repeat performance test under § 60.674(b)(1)). The purpose of the inspections is to ensure that water is flowing to the discharge water spray nozzles in the wet suppression system. If, during an inspection, water is not flowing properly, corrective action must be initiated within 24 hours and completed as expediently as practical. The requirement to complete corrective action as expediently as practical was added in response to public comment. We added § 60.674(b)(1) to this final rule to specify the testing exemption and to require NMPP to designate (at the time of the initial performance test) which upstream water spray(s) will be periodically inspected for water flow to indicate continuous compliance with the fugitive emission limits for each affected facility being exempted from the 5-year repeat performance testing.

Baghouse monitoring. As proposed, the 7 percent stack opacity limit is being replaced with ongoing monitoring for baghouses on affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008. This final rule contains three options for monitoring of baghouses on affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008. The first two options are being promulgated as proposed. The third option is being added to the final standards (as a result of public comments) for affected facilities subject to the Lime Manufacturing National Emission Standards for Hazardous Air Pollutants (NESHAP).

The first option is quarterly VE inspections using EPA Method 22 for 30 minutes. The VE inspections would be successful if no visible emissions are observed. If any VE are observed, corrective action must be initiated within 24 hours to restore the baghouse to normal operation. If the baghouse normally displays some VE, a different baghouse-specific success level for the VE inspections (other than no VE) can be established by conducting a PM test simultaneously with a Method 22 test to determine what constitutes normal VE from the baghouse when it is in compliance with the subpart OOO PM concentration limit. The revised VE inspection success level must be incorporated into the operating permit.

The second option is the use of a bag leak detection system. The bag leak detection system must be installed and operated according to § 60.674(d).

For affected facilities subject to the Lime Manufacturing NESHAP, we are offering a third option. This option is complying with the continuous compliance requirements for baghouses on processed stone handling operations in the Lime Manufacturing NESHAP (40 CFR part 63, subpart AAAAA).

Wet scrubber monitoring. As proposed, we are revising § 60.676(d) to delete reference to scrubber pressure gain and the upper limit for scrubber liquid flow. Increases in these parameters would only increase

scrubber PM removal efficiency and thus reduce PM emissions. We are not making any further changes to the wet scrubber monitoring requirements at this time because the Agency proposed Performance Specification 17 (PS–17) and Procedure 4 for continuous parameter monitoring systems (which include pressure and liquid flow measurements) on October 9, 2008 (73 FR 59956). Following public comment and promulgation of PS–17 and Procedure 4, the procedures and requirements in PS–17 and Procedure 4 are intended to supersede the wet scrubber monitoring language in subpart OOO for affected facilities with wet scrubbers installed on or after October 9, 2008.

E. What are the final notification, reporting, and recordkeeping requirements for subpart OOO?

Notifications and reports. We are simplifying the notification requirements in subpart OOO in several ways as proposed. We are deleting reference to § 60.7(a)(2) in § 60.676(h) to be consistent with changes made to subpart A. We are also adding new rule language for § 60.676(h) to waive the § 60.7(a)(1) (subpart A) requirement to submit a notification of commencement of construction/reconstruction for NMPP affected facilities. We are adding a new § 60.676(k) to subpart OOO stating that notifications generated under subpart OOO are only to be sent to either the State (if the State is delegated authority to administer NSPS) or to the EPA Region (if the State has not been delegated authority), but not to both the State and EPA Region. We are changing § 60.675(g) to allow a 7-day advance notification for performance tests involving only Method 9.

What are the final recordkeeping requirements for subpart OOO? As proposed, we are requiring NMPP to keep records of periodic inspections performed on water sprays (monthly checks that water is flowing) or baghouses (quarterly Method 22 readings) controlling affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008. Each periodic inspection must be recorded in a logbook which may be maintained in written or electronic format. The logbook entries include inspection dates and any corrective actions taken. The logbook must be kept onsite and either a hard copy or electronic copy (whichever is requested) made available to EPA or delegated authority upon request.

Plants opting to use bag leak detection systems in lieu of periodic VE inspections for baghouses will be required to keep the records specified in § 60.676(b)(2). Plants opting to follow the continuous compliance requirements of Subpart AAAAA of Part 63 must keep the records specified in § 63.7132(a)(3) and (b) of 40 CFR part 63, subpart AAAAA. According to § 60.7(f), records are required to be retained for a period of 2 years.

IV. Summary of Significant Comments and Responses on Subpart OOO

We received a total of 26 comments from NMPP, industry trade associations, and State environmental agencies during the public comment period for the proposed amendments to subpart OOO. Several changes are being made to these final amendments in response to these public comments. The major comments leading to rule changes and our responses are summarized in the following sections. Along with comments offering suggested changes, we received a number of comments offering support for the amendments to subpart OOO. We received only supportive comments for many of the proposed amendments including: omitting the stack opacity limit for new affected facilities (except for baghouses controlling individual enclosed storage bins), exempting static grizzlies, eliminating upper limits on wet scrubber liquid flow and pressure drop, allowing the use of Method 5I as a PM test method, reducing the Method 9 stack testing time for storage bins and loadouts that operate less than one hour at a time, and specifying that compliance is based on the average of the five 6-minute averages recorded during the 30 minute Method 9 tests for affected facilities with fugitive emissions. These supporting comments are not included in this preamble. A complete summary of all the comments received during the comment period and responses thereto can be found in the docket for the final amendments and new standards (Docket ID EPA–HQ–OAR–2007–1018). The docket also contains further details on the analyses summarized in the responses below.

A. Need for New Source Performance Standards

Comment: In addition to other comments requesting exemption of the salt industry from subpart OOO (which are addressed in the Summary of Public Comments and Responses document), one commenter requested that EPA exempt salt operations (rock salt and sodium chloride) from subpart OOO because most salt operations do not operate crushers or grinders above ground. The commenter stated that subpart OOO was intended to cover open pit mining and noted that the applicability prerequisite of the rule is that a facility must have a crusher or grinder. The commenter stated that underground mines are exempt from the rule (assuming there are no secondary or tertiary crushers above ground) yet also have crushers/grinders located underground and can have screening and process equipment above ground that produce emissions. The commenter explained that salt is produced at three types of facilities (solution mines, solar production, and traditional underground mines). Some of the commenter's plants are subject to subpart OOO because they operate small above ground crushers (which are located indoors) for one production line at solution and solar operations. The commenter stated that many salt operations are enclosed in buildings and operate with dust collectors for product quality reasons and to reduce dust inside the building.

Response: The 1997 NSPS action (62 FR 31351, June 9, 1997) added § 60.670(a)(2) to subpart OOO to clarify that the provisions of subpart OOO do not apply to all facilities located in underground mines and plants without crushers or grinding mills. It was noted in the proposal and promulgation notices for the 1997 NSPS action that emissions from crushers or other facilities in underground mines are vented in the general mine exhaust and cannot be distinguished from emissions from drilling and blasting operations which are mining operations not covered by the standards. It was the original intent of the NSPS that stand-alone screening operations at plants without crushers or grinding mills are not subject to the NSPS (*i.e.,* because the original definition of ''nonmetallic mineral processing plant'' refers to equipment used to crush or grind nonmetallic minerals). Consistent with the intent of the original NSPS and the 1997 clarifications, we are amending § 60.670(a)(2) to clarify that plants without crushers or grinding mills above ground are not subject to subpart OOO. Plants with any above ground crushers or grinding mills (including those located in buildings) for which construction, modification, or reconstruction commenced after August 31, 1983, remain subject to the provisions of subpart OOO. Subpart OOO specifically addresses emissions from affected facilities located in buildings and provides options for measurement of these emissions.

B. Emission Limits

Comment: Commenters questioned the basis for revising the emission limits because the technology representing BDT has not changed. The commenters argued that EPA is taking away the margin of compliance available for facilities using the identified NSPS technologies.

Several commenters objected to the proposed stack PM limit of 0.014 gr/dscf and questioned the basis for the revision. Some commenters agreed with the conclusion that setting a PM limit below 0.014 gr/dscf could result in a level of control that may be difficult to continually achieve.

Many commenters questioned the technical reasons for reducing the fugitive emission limits from 15 to 12 percent opacity for crushers and from 10 to 7 percent opacity for other affected facilities. Some commenters questioned if reducing the fugitive emission limits is necessary, given EPA's conclusion that the potential benefits cannot be quantified and are likely to be similar to the current standard. Commenters were particularly concerned with the proposed 7 percent fugitive opacity limit and stated that an opacity standard within the 7.5 percent positive error of Method 9 is basically a ''no VE'' standard. Two commenters referred to Method 9 error as high as 14 percent in the document ''Air Pollution Control Techniques for Non-Metallic Minerals Industry'' (EPA–450/3–82–014, August 1982). Other commenters noted that it would make more sense for the limits to be in increments of 5 percent since this is how opacity is read. The commenters supported basing compliance on the average of the five 6-minute averages collected during the 30-minute opacity test. Two commenters supported the proposed fugitive emission limits.

Response: Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as BDT. Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions. The subpart OOO emission limits were established with the 1983 proposal and 1985 promulgation of subpart OOO, based on review of the performance of technology and emissions data collected in the late 1970s. The emission limits have not been reevaluated based on actual emissions testing in over 20 years because the first action taken with respect to the NMPP NSPS, completed on June 9, 1997 (62 FR 31351), considered provisions other than the emission limits.

For purposes of this (2008–2009) NSPS review, we reviewed more recent actual emissions data from hundreds of emissions tests conducted on a variety of subpart OOO affected facilities in many NMPP industries (EPA–HQ–OAR–2007–1018–0085). These data revealed that the vast majority of affected facilities perform substantially better than the current subpart OOO emission limits. Therefore, we determined that it was appropriate in this NSPS review to reduce the subpart OOO emission limits for affected facilities commencing construction, modification, or reconstruction on or after April 22, 2008. Further, because the majority of existing affected facilities for which we have data meet the revised standards (as discussed below), EPA concludes that all new affected facilities should also be able to achieve them.

For affected facilities commencing construction, modification, or reconstruction on or after April 22, 2008, we are retaining (as proposed) the stack emission limit of 0.014 gr/dscf and we are replacing the associated 7 percent stack opacity limit with a continuous monitoring requirement. For affected facilities commencing construction, modification, or reconstruction on or after April 22, 2008, we are promulgating the proposed fugitive emission limits of 12 percent opacity for crushers without capture systems and 7 percent opacity for all other types of affected facilities with fugitive emissions (including fugitive emissions from grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations, and any other affected facility).

The stack emissions data we reviewed to set the revised limits included over 300 PM stack tests from 1990 and later. Ninety-one percent of the PM stack test results achieved 0.014 gr/dscf or lower. The control devices used for the affected facilities tested included primarily baghouses and wet scrubbers. In addition, we reviewed more than 700 fugitive emissions tests. For crushers without capture systems, 98 percent of the fugitive emissions test averages were at or below 12 percent opacity and 99 percent of the fugitive emissions test averages for other types of affected facilities were at or below 7 percent opacity. The fugitive emission limits are most commonly met through use of wet suppression (as needed), water carryover, or with a partial enclosure. Affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, can employ the same control devices or fugitive emission reduction measures for which test data were reviewed to meet the revised emission limits, except that the small fraction of marginally performing controls would no longer be acceptable for new, modified, or reconstructed affected facilities. The small fraction of existing marginally performing controls can be represented by the fraction of test data above the revised emission limits (*i.e.,* less than 10 percent of data, including data from controls that failed to meet the original NSPS limits but were later retested and met the limits). Such controls will no longer be acceptable for new, modified, or reconstructed affected facilities. This is consistent with the goal of NSPS review to reflect improvements in methods for reducing emissions. In short, because the vast majority of existing affected facilities for which we have data are achieving these revised standards, EPA has concluded that all new affected facilities should be able to achieve these revised standards as well. We have no reason to believe that new affected facilities could not meet the revised standards.

We disagree with assertions that the revised limits erase any margin for error or fail to account for variability. To the contrary, significant percentages of the test data achieved substantially lower limits than are being promulgated for subpart OOO. Thus, a workable compliance margin and provision for variability remains.

The emission reduction associated with lowering the fugitive emission limits is not quantifiable because no reduction in mass emission rate can be determined from opacity measurements. However, that does not mean that there is no environmental benefit. The environmental benefit is that higher emissions from marginally performing controls (as described above) will no longer be acceptable for fugitive emissions from affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008.

Although opacity is read in 5 percent increments, the test average resulting from averaging the opacity observations is not limited to increments of 5 percent opacity. In addition to reducing the fugitive opacity limits, we are also specifying in § 60.675(c)(3) that the

duration of the Method 9 observations must be 30 minutes (five 6-minute averages) and that compliance with the fugitive emission limits must be based on the average of the five 6-minute averages (which is equivalent to the test average). Commenters unanimously supported this averaging procedure.

Regarding the 7.5 percent error mentioned in Method 9 and the 14 percent error reflected in EPA–450/3–82–014, we note that these error values are based on 6-minute average opacity results and represent exceptions rather than norms. Therefore, we disagree that setting an opacity standard below 7.5 percent is equivalent to establishing a ''no visible emission'' standard. We further note that the averaging procedure specified in § 60.675(c)(3) requires averaging of more than 6 minutes of observations which would dampen the effect of any errors.

Comment: One commenter requested clarification on the rule language in § 60.672(f) regarding the limit for a baghouse controlling only an individual enclosed storage bin that commenced construction, modification, or reconstruction on or after April 22, 2008. The commenter, and another commenter, supported retaining the 7 percent opacity limit for such baghouses. Another commenter suggested that additional rows be added to Table 2 to illustrate the various scenarios to replace the footnotes and exceptions.

Response: As proposed, the revisions to subpart OOO specify that a baghouse controlling only an individual enclosed storage bin is exempt from the stack PM concentration limit but must meet a 7 percent opacity limit. The 7 percent opacity limit is being retained for baghouses controlling only an individual enclosed storage bin that commences construction, modification, or reconstruction on or after April 22, 2008, because such baghouses have no applicable PM concentration requirements. We have modified the wording in § 60.672(f) to clarify this intent.

We requested comment in the preamble to the proposed rule on whether the addition of Tables 2 and 3 to subpart OOO helped to improve the readability of the rule and helped to distinguish between the stack and fugitive emission limits. We considered adding rows to the proposed Table 2 to subpart OOO to address the exceptions noted in the table footnotes as suggested by one commenter. However, we found the resulting table to be more cumbersome and difficult to read than the proposed table with footnotes. Given that we only received one comment regarding the tables, we concluded that the proposed tables are acceptable to most stakeholders and have chosen not to overhaul the rows of Table 2 to subpart OOO to prevent confusion. However, we clarified the language in § 60.672(f) cited in footnote ''a'' of Table 2 to subpart OOO and corrected paragraph number references.

Affected facilities using wet dust suppression or other fugitive emission reduction measures (but no control device) are subject to the fugitive emission limits. The stack emission limits apply for affected facilities using capture systems, which by definition in § 60.671, transport PM to a control device. It has come to our attention that further clarification may be needed for circumstances when fugitive emissions escape from a capture system that directs emissions to a control device such as a baghouse or wet scrubber. Therefore, we are modifying the title of the proposed Table 3 to subpart OOO and § 60.672(b) to reflect that fugitive emissions escaping from a capture system prior to reaching the control device are subject to the applicable fugitive emission limits (and associated compliance demonstration requirements) in Table 3 to subpart OOO. The captured emissions routed to the control device would be subject to the applicable stack emission limits (and associated compliance demonstration requirements) in Table 2 to subpart OOO. We are also rewording the proposed column headings in Table 3 to subpart OOO so the table contains language from the original NSPS sections § 60.672(b) and (c) that distinguished between crushers without capture systems (*e.g.,* crushers controlled by wet suppression only) and other affected facilities including crushers with capture systems as defined in § 60.671 that allow fugitive emissions to escape (*e.g.,* capture systems not completely effective in transporting emissions to the control device). These clarifications are consistent with the original structure and intent of subpart OOO as described in the original 1983 proposal notice (see 48 FR 39571–39573 and 39577, August 31, 1983), the 1985 promulgation notice (see 50 FR 31335 and 31339, August 1, 1985), and in the 1983 Background Information Document (EPA–450/3–83–001b).

Comment: Multiple commenters supported the replacement of the Method 22 no VE standard for building openings with a 7 percent fugitive opacity limit at the inlet and outlet points of a building measured using a 30-minute Method 9 test with compliance determined as stated in § 60.675(c)(3). Some commenters argued that the limit should be greater than 7 percent due to the error in Method 9 measurements. The commenters suggested that the fugitive opacity limit be tied to that of the equipment with the highest allowable standard located within the structure since the purpose of the structure is typically for noise control or aesthetics and not emissions control. An additional commenter stated that NSPS sources inside buildings should have the option of either doing a performance test on the equipment using the 30-minute Method 9, or testing the ingress and egress of the building.

Two commenters suggested that building vents be exempt from the stack PM concentration limit and associated performance testing (like baghouses controlling emissions from individual enclosed storage bins). The commenters stated that building vents and individual storage bin baghouses have the same 7 percent opacity limit, and both are likely to have very low velocities. The commenters noted there is the potential for problems with isokinetic conditions, and long testing times to get the required sample volume even with Method 5I. With a 7 percent opacity limit and low velocities, the commenters stated that actual mass emissions from a vent would be very low. The commenters noted that vents are also more likely to be in locations difficult to access without potential safety concerns.

Response: The emission limits specified for buildings are part of an optional compliance method for affected facilities inside of buildings. Rather than measuring the emissions from each affected facility within a building (which is sometimes difficult due to close equipment spacing and lighting), NMPP have the option of measuring emissions from the building. For example, NMPP have the option of conducting a 30-minute Method 9 on fugitive emissions from each of the affected facilities within a building, or conducting a 30-minute Method 9 on the building openings (*i.e.,* ingress and egress).

Emissions can escape buildings in two ways: (1) As fugitive emissions through an unpowered building opening, or (2) as emissions discharged through a powered building vent. ''Vent'' is defined in § 60.671 as, ''*an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one or more affected facilities.*'' Because there are two ways emissions can escape from buildings, two sets of

emission limits make up the optional building compliance procedure:

(1) A 7 percent opacity limit for fugitive emissions from building openings, and/or

(2) The subpart OOO stack emission limits for building vents (*i.e.,* 0.022 gr/dscf and 7% opacity for affected facilities between August 31, 1983, and April 22, 2008; and 0.014 gr/dscf and ongoing monitoring for affected facilities on or after April 22, 2008).

The 7 percent opacity limit for fugitive emissions from building openings (measured with a 30-minute Method 9 test) is being promulgated as proposed. The 7 percent opacity limit was proposed as a change from the former no VE limit (measured with EPA Method 22) for building openings. We disagree that the building fugitive opacity limit should be higher than 7 percent due to Method 9 measurement error, because, as stated previously, the measurement errors referenced by commenters were atypical. We also disagree that the building fugitive limit should be tied to that of the affected facility with the highest allowable limit. The 7 percent opacity limit corresponds to the lower of the two fugitive emission limits for affected facilities that may be housed in a building. The 7 percent fugitive opacity limit also corresponds to the 7 percent stack opacity limit required for building vents for affected facilities that commenced construction, modification, or reconstruction between August 31, 1983, and April 22, 2008.

We disagree with the commenters that building vents should be exempted from the stack PM concentration limit and associated initial performance testing. Building vents are treated differently from baghouses controlling individual enclosed storage bins for several reasons. First, testing of building vents is an optional method for demonstrating compliance. Facilities may either measure emissions from each affected facility within a building, or opt to measure emissions from the building. Second, the revisions to subpart OOO contain rule language in § 60.675(e)(4) specifically to address low flow rate conditions from building vents. No comments were received on the proposed language and § 60.675(e)(4) is being promulgated as proposed. Third, Method 5I is an optional test method added to subpart OOO to address low flows. Use of Method 5I is not limited to the subpart OOO affected facility examples stated in § 60.675(e)(3). Method 5I may be used for building vents if it is helpful. Given the number of options available for determining flow rate and testing PM, the stack PM limit has been retained for building vents.

C. Applicability and Definitions

Comment: Several commenters supported exemption of wet material processing operations from subpart OOO and the proposed definition of ''saturated material.'' However, one commenter noted that it may be difficult to determine what is saturated. The commenter suggested that EPA specify in the definition of ''saturated material'' that water is visibly dripping from the processed material or that wet material be restricted to subterranean, sub-aqueous (excavated) materials.

Response: We are promulgating the exemption for wet material processing operations as proposed. The intent of the definition of ''saturated material'' is to define mineral material with sufficient surface moisture (excluding material wetted by wet suppression systems) such that PM emissions are not generated from processing of the material through screening operations, bucket elevators and belt conveyors. We disagree that water must be visibly dripping from nonmetallic minerals in order for there to be sufficient surface moisture to eliminate the potential for PM emissions from the handling of the material. Therefore, we have not incorporated the commenters suggested addition to the definition (nor have we restricted wet material to subterranean, sub-aqueous excavated materials).

D. Testing Requirements

Comment: Numerous commenters stated that repeat fugitive emissions testing every 5 years for affected facilities without direct water sprays is unnecessary. The commenters noted that carryover moisture has been demonstrated to control fugitive emissions as acknowledged in AP–42 Chapter 11.9.2 for Crushed Stone Processing.

The commenters stated that the number of sources controlled by water carryover or with partial enclosure that would be required to conduct repeat tests every 5 years would be enormous, posing a burden for industry and delegated regulatory agencies with minimal environmental return. The commenters stated that there is no need to conduct repeat tests if the affected facilities that rely on water carryover have initial performance tests showing compliance with the emission standard and monthly inspections showing that the controls installed at the time of initial testing continue to function as designed. Delegated agencies have the authority to request a Method 9 test at any time to verify compliance if there is a concern. Some commenters noted that, in addition to the initial compliance test, companies do various inspections to verify compliance and are also routinely inspected by State and local regulatory agencies. One commenter noted that sources are observed for a short time and often enough to assure compliance with State regulations (without having to go through a time consuming testing process).

Similarly, several commenters argued that a repeat performance test should not be required for affected facilities located inside buildings and controlled by either wet suppression or dry collection devices. In addition, multiple commenters stated that repeat testing is unnecessary for affected facilities inside buildings that do not have direct water sprays. The commenters noted that if initial performance testing conducted on these affected facilities shows compliance with the emission limit using the existing controls, and the proposed monthly inspections show that the controls are functioning, then a repeat Method 9 test is not necessary.

Response: Continuous compliance requirements are included in this final rule for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, as part of an ongoing effort to improve compliance with various Federal air emission regulations.[3] As proposed, affected facilities (that commence construction, modification, or reconstruction on or after April 22, 2008) with fugitive emissions controlled by wet suppression water sprays are required to conduct the initial Method 9 opacity test and to conduct monthly inspections of the direct water sprays according to § 60.674(b) and § 60.676(b). Repeat Method 9 testing is not required (and was not proposed) for affected facilities with direct water sprays because the monthly inspection requirements were determined to be adequate for NMPP to demonstrate continuous compliance with the fugitive emission limits.

We agree that water carryover can be an adequate control measure for fugitive emissions for a number of affected facilities when sufficient moisture is delivered by upstream water sprays. Therefore, we are eliminating from this final rule the proposed 5-year repeat Method 9 test for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, and have fugitive emissions

[3] Inadequate monitoring concerns were raised by EPA in an Advance Notice of Proposed Rulemaking (ANPR) published on February 16, 2005 (70 FR 7905).

controlled by water carryover from upstream water sprays if the upstream water sprays are inspected according to the requirements in § 60.674(b) and § 60.676(b) of subpart OOO. In many cases, the upstream water spray(s) responsible for controlling fugitive emissions from a subpart OOO affected facility (that commences construction, modification, or reconstruction without water sprays on or after April 22, 2008) will already be subject to the subpart OOO water spray inspection requirements in § 60.674(b) and § 60.676(b). However, there may be cases where the upstream water spray(s) responsible for controlling fugitive emissions from a subpart OOO affected facility (without water sprays) are not subject to the subpart OOO water spray inspection requirements (*e.g.,* because the upstream affected facility with water sprays predates the April 22, 2008, applicability date for monitoring). Such upstream water spray(s) may also be monitored according to § 60.674(b) and § 60.676(b) by NMPP wishing to exempt selected affected facilities from the 5-year repeat testing requirements. We leave to the discretion of the NMPP and their permitting authority to determine which upstream water sprays (and whether one or more of the upstream water sprays) require monitoring. We have included § 60.674(b)(1) in this final rule to specify the 5-year repeat testing exemption and to require NMPP to designate (at the time of the initial performance test) which upstream water spray(s) will be periodically inspected for water flow to indicate continuous compliance with the fugitive emission limits for each affected facility being exempted from 5-year repeat performance testing. It is necessary to specify which water sprays will be monitored initially so it will be clear (for enforcement purposes) which affected facilities controlled by carryover will rely on monitoring of upstream water sprays versus a 5-year repeat Method 9 test.

This final rule retains the proposed 5-year repeat Method 9 testing requirement for affected facilities with fugitive emissions that are not controlled by direct water sprays or by carryover from upstream water sprays. We acknowledge that some State permits contain continuous compliance measures and some State and local agencies may routinely perform inspections. However, some NMPP permits are devoid of continuous compliance measures and the frequency of State and local inspections can vary considerably for NMPP. It is appropriate for the NMPP NSPS to include uniform continuous compliance measures for all NMPP. We considered the costs and burden associated with various frequencies of Method 9 testing and determined that the costs of the 5-year repeat Method 9 (30-minute test) are reasonable. Our cost analysis is documented in a memorandum available in Docket EPA–HQ–OAR–2007–1018.

We have eliminated the proposed repeat 5-year testing requirement for affected facilities enclosed in buildings. Buildings function as a means of reducing fugitive emissions in addition to any control measures that are applied to the affected facilities within the building. The final monitoring requirements for affected facilities located inside of buildings are the same as for affected facilities that are not enclosed by a building (*e.g.,* monthly inspections to verify water sprays are operating or quarterly Method 22 inspections for dry collection devices). These monitoring requirements apply for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008.

Comment: Multiple commenters noted that EPA is proposing to allow Method 9 testing of up to three emission points at one time as long as three conditions are met. Most commenters agreed with the first two conditions but recommended that the third condition be eliminated if EPA promulgates a 7 percent fugitive opacity limit for selected equipment. As proposed, the third condition specified that if an opacity reading for any one of the three points is within 5 percent opacity from the applicable standard, then the observer must stop taking readings for the other two points and continue reading just that single point. Most commenters felt that the revised 7 percent opacity limit would prevent reading of more than one point at a time since opacity is read in 5 percent increments and a single reading of 5 percent would prevent multiple point testing. One commenter requested that the second requirement that all points be within 70 degrees of each other be changed to 90 degrees.

Response: We disagree that the three conditions for allowing Method 9 readings of up to three emission points at one time should be eliminated. This provision and the three conditions were made available for 40 CFR part 60, subparts LL and OOO in 1999 and are well established alternative testing procedures. Therefore, the first two conditions (§§ 60.675(e)(2)(i) and (ii)) are being promulgated as proposed.

However, we do agree with commenters that the third condition limits the applicability of this provision for affected facilities subject to the revised 7 percent fugitive emission limit. To remedy this situation, we are changing the wording in § 60.675(e)(2)(iii). This revision will require the observer to focus on a single emission point where a single opacity reading suggests the point may be close to or exceeds the applicable standard, but does not unduly preclude an observer from observing three points at a time, which is more cost effective. We believe that this revision strikes the appropriate balance between accurately determining compliance and allowing facilities to conduct cost-effective observations.

Comment: Multiple commenters supported EPA's proposal to postpone initial performance testing until no later than 60 calendar days after resuming operation of the affected facility following a seasonal shutdown. A few commenters noted that severe winter weather and inventory control issues in certain parts of the country may require NMPP to cease operations for several months, and in their experience, these seasonal shut downs interfered with meeting the subpart OOO performance testing deadlines. Most commenters supported the proposed definition of ''seasonal shut down.''

One commenter stated that the requirement to obtain prior approval for a seasonal shut down testing delay from the permitting authority may be virtually unworkable in practice. Additionally, the commenter suggested that a delay in performance testing should be allowed for reasons beyond just ''seasonal market conditions'' as denoted in the definition of ''seasonal shut down.'' The commenter stated that a shut down may occur for weather-related reasons not directly related to seasonal market conditions and also for cyclical reasons. According to the commenter, there could also be scenarios of equipment failure or weather-related shut down that are unforeseen and push the facility past the compliance demonstration date, without the sufficient notice to schedule around the shut down that EPA postulates. The commenter requested that EPA broaden section § 60.675(i) to allow deferral of a compliance test if the deadline for the initial compliance test falls at a time when the facility is shut down for a period of at least 30 days (regardless of the reason for the shut down), if the permitting authority is notified of the shut down and the deferral of compliance testing.

Response: It is not possible or necessary for subpart OOO to allow for deferral of performance testing for every situation that could affect testing. Some situations need to be addressed on a case-by-case basis. Our intent with the proposed definition of ''seasonal shut down'' and associated regulatory language in § 60.675(i) was to account for a common situation that occurs frequently in the nonmetallic mineral processing industries. Section 60.675(i) allows initial performance testing to be postponed up to 60 days after resuming operation following a seasonal shut down. We are revising the proposed definition of ''seasonal shut down'' to clarify our intent that shut downs eligible for the § 60.675(i) provision include weather conditions. We consider shut downs occurring for cyclical reasons or current economic conditions to be seasonal market conditions eligible for the § 60.675(i) provision as long as these conditions last 45 consecutive days as specified in the definition of ''seasonal shut down.'' It was not the intent of the § 60.675(i) provision or the definition of ''seasonal shut down'' to include equipment failures. We believe testing delays due to equipment failures (which could include failure of processing or control equipment) should be addressed on a case-by-case basis. We believe equipment failures should be treated on a case-by-case basis because the reasons for a given equipment failure will vary from facility to facility and from instance to instance. Further, the handling of a given equipment failure will vary depending on such factors as how often the facility has experienced a failure and what the facility has done to avoid equipment failure.

We maintain that prior approval of the permitting authority is necessary for extension of the performance testing deadline. However, we are not restricting the timing or form (*e.g.,* written, verbal, e-mail) of such approval with a formal notification procedure.

E. Monitoring Requirements

Comment: One commenter suggested that the proposed requirement of monthly inspections to ensure that water is flowing to the spray nozzles be amended to clarify that such inspections are not required for equipment using wet suppression on a seasonal basis. Another commenter generally supported the monthly inspection requirements for wet suppression systems, but requested that EPA address freezing hazards requiring wet suppression systems to be turned off during winter months. The commenter noted that water sprays are often used on transfer points during dry months but are turned off during wet months when precipitation is adequate to suppress fugitive dust.

The commenter suggested that language be included in § 60.674(b) stating that you must initiate corrective action within 24 hours if you find that water is not flowing properly during an inspection of the water nozzles unless either (1) the temperature in the affected facility is such that water spraying would create a danger to personnel or equipment, or (2) the affected facility is not enclosed and measurable precipitation has occurred at the facility each day since the prior inspection. The commenter further suggested that in the event of a low-temperature condition preventing operation of the spray system or continuous precipitation eliminating the need for the spray system, the owner/operator should record that fact in the logbook in lieu of corrective action.

Response: We recognize that some NMPP may use wet suppression on a seasonal or as needed basis (*e.g.,* wet suppression may not be necessary to reduce fugitive emissions following a rain event in some instances). We also acknowledge the hazards that can be associated with wet suppression systems during freezing conditions for those NMPP that operate through winter months. Wet suppression water sprays are a common control measure applied to reduce fugitive emissions from NMPP affected facilities. The intent of the wet suppression water spray nozzle inspections is to indicate continuous compliance with the fugitive emission limits by detecting and correcting operational problems with the water sprays, including inoperable water sprays (regardless of the reasons for not operating). Affected facilities must operate in compliance with the subpart OOO fugitive emission limits at all times (except for periods of startup, shutdown, or malfunction as described in the General Provisions). Therefore, we cannot simply refer to vague conditions of ''temperature'' or ''measurable precipitation'' in subpart OOO, particularly since the duration of these conditions and their effect on dust suppression can be quite variable and site-specific (*e.g.,* a small amount of precipitation on a hot day may evaporate quickly and do nothing to control fugitive emissions).

Subpart OOO does not specify that any particular control technology be used. Rather, subpart OOO specifies emissions limits that must be met by affected facilities with fugitive emissions. NMPP can meet the subpart OOO emission limits using whatever mechanisms they choose (*e.g.,* wet suppression water sprays, measurable precipitation, water carryover, etc.). Regardless of the mechanism for control, the emissions limits must be met continuously.

Plants must identify the control mechanisms they will use to attain compliance with the applicable emission limits as part of the construction and/or operating permitting process. Plants with wet suppression water sprays that intend to cease operation of their water sprays due to rainfall or freezing conditions should specify this in their permit applications and/or permits. It will be at the discretion of the NMPP and permitting authority as to how compliance with the subpart OOO emission limits will be attained when the wet suppression system is not operating (considering the frequency and duration of such events). For example, if an affected facility will be operated for weeks or months at a time without its wet suppression system, then the permitting authority may request a Method 9 test while the wet suppression system is turned off to verify that compliance with the subpart OOO emission limits will be demonstrated. Once these details are worked out with the permitting authority, then logbook entries (made pursuant to §§ 60.674(b) and 60.676(b)) indicating the wet suppression system was not operating will be within the constraints of the facility's permit. However, plants with wet suppression that do not reveal during the permitting process their intent to, at times, cease operation of their wet suppression system (and address how subpart OOO compliance will be attained during such times) would be subject to enforcement scrutiny if their wet suppression inspection logbook reveals periods when the water sprays were not operated. We are adding § 60.674(b)(2) to clarify that the logbook entry must identify any alternative control mechanism (*e.g.,* rainfall) being used at the time of the monthly inspection.

Comment: One commenter agreed that monthly inspection of discharge spray nozzles to check water flow coupled with a requirement to initiate corrective action within 24 hours (with each inspection and corrective action being recorded in a logbook) is reasonable for wet suppression technology. Another commenter requested that EPA set a deadline for completion of repairs so the wet suppression system is working properly (*i.e.,* to finish what was started).

Response: For wet suppression inspections identifying water flow problems, we are expanding the

requirement in § 60.674(b) to initiate corrective action within 24 hours (with each inspection and corrective action being recorded in a logbook) to also require that the corrective action must be completed as expediently as practical.

Comment: One commenter requested that the baghouse monitoring requirements in Table 6 to the lime manufacturing NESHAP (40 CFR part 63, subpart AAAAA) be allowed as an alternative to the proposed subpart OOO baghouse monitoring requirements (*i.e.,* quarterly 30-minute Method 22 VE testing with corrective action within 24 hours or use of a bag leak detection system). The commenter noted that the lime manufacturing NESHAP has more stringent requirements for processed stone handling (PSH) units (*e.g.,* including PSH storage bins, conveying system transfer points, etc.).

The commenter stated that the lime manufacturing NESHAP requires a monthly Method 22 VE check. If VE are observed, within 1 hour of observation, one 6-minute Method 9 test is required. If the opacity limit is exceeded, corrective action is required in accordance with the operation, maintenance and monitoring plan. If no VE are observed for 6 months, Method 22 frequency can be reduced to semi-annually, and can be further reduced to annually if no VE are observed during the semi-annual check (Table 6 to Subpart AAAAA).

The commenter noted that the lime industry has invested substantial resources in developing environmental management systems, including corrective action plans and lime plant operator training, in order to maintain compliance with the lime manufacturing NESHAP.

Response: We agree that the VE observation requirements in the Lime Manufacturing NESHAP (40 CFR Part 63, Subpart AAAAA) for PSH operations are adequate for purposes of demonstrating continuous compliance with subpart OOO because these requirements will ensure proper baghouse operation. We are adding §§ 60.674(e) and 60.676(b)(3) to subpart OOO to refer to the VE observation requirements and associated recordkeeping language in the Lime Manufacturing NESHAP. For affected facilities subject to those requirements, the recordkeeping requirements in the Lime Manufacturing NESHAP replace the subpart OOO requirements to maintain a logbook. Only affected facilities subject to the requirements for PSH operations in the Lime Manufacturing NESHAP are allowed to use the Lime Manufacturing NESHAP alternative to the subpart OOO baghouse VE inspections.

Comment: One commenter questioned the appropriateness of Method 22 VE inspections of baghouse-controlled sources and requested that the duration of the Method 22 observations be reduced from 30 to 15 minutes since the emission point can be viewed from one location. Another commenter thought the 30 minute duration for a Method 22 test was excessive, but supported use of Method 22 testing for monitoring baghouse emissions. Although a third commenter believes the proposed Method 22 and bag leak detector (BLD) monitoring provisions could trigger corrective action requirements when the 7 percent opacity standard is not exceeded, the commenter stated that the options as proposed (which include the ability to obtain site specific exceptions) are reasonable for baghouse technology. This commenter would not support a requirement that all baghouse-controlled affected facilities employ BLDs.

Response: We believe that a quarterly 30-minute Method 22 (40 CFR part 60, Appendix A–7) is a reasonable and appropriate method for determining the frequency of VE from baghouses. Although the method was developed for measuring the frequency of fugitive emissions, it is not limited to fugitive emissions points. Method 22 has been applied for baghouse-controlled emission points in a number of permits and rules. The use of BLD remains an alternative to the quarterly VE observations in the promulgated standards.

F. Notification, Reporting and Recordkeeping Requirements

Comment: Multiple commenters supported reducing the 30-day advance notice to a 7-day notice prior to performance testing for Method 9 tests. The commenters noted that many States are already relaxing this requirement.

Conversely, another commenter from a state agency requested that EPA retain the 30-day advance notice. The commenter stated that 7 days is not enough time for their regulatory staff to review the plan and determine if (based on site-specific circumstances) the presence of an investigator is required. The commenter noted that weather-related delays are already addressed in § 60.8(d) where staff work under the 7-day rescheduling process.

Response: As proposed, we are promulgating a 7-day advance notice prior to NMPP performance tests involving only Method 9 observations. We made this change because of the large number of NMPP that are required to conduct only Method 9 testing for fugitive emissions from affected facilities, because plans for NMPP Method 9 opacity readings require little review, and because Method 9 tests are affected by weather (visibility) and subject to rescheduling such that a 30-day advanced notification can be impractical for NMPP. We believe that 7 days is a reasonable time frame for NMPP. However, State agencies wishing to require a longer time period for advanced notice of Method 9 performance testing (*e.g.,* 30 days instead of 7 days) have the discretion to do so.

Comment: One commenter noted that the logbook discussed in § 60.676(b)(1) must be made available upon request to the Administrator. The commenter requested that a hard copy be made available even if the logbook is kept electronically.

Response: We have incorporated the commenter's suggestion to specify that hard copies of the logbook be made available to the Administrator upon request. The Administrator (or permitting authority) may request either a hard copy or electronic copy of the logbook for inspection.

G. Construction, Modification, and Reconstruction

Comment: One commenter requested that EPA clarify wording in the preamble and rule regarding applicability of the NSPS revisions. The commenter noted that the date of commencement of construction, modification, or reconstruction is of regulatory importance for NSPS (not the date when construction, modification, or reconstruction is fully completed). The commenter stated that the proposal preamble references to ''future'' affected facilities are confusing and should be replaced with the longer but more rigorous description for sources for which construction has commenced.

Response: We are rewording § 60.674(b), (c), and (d) and § 60.676(b)(1) to replace the word ''installed'' with the terms used in the General Provisions (*e.g.,* for which construction, modification, or reconstruction commenced on or after April 22, 2008). We are also omitting the term ''future'' and using language in the preamble to this final rule to clearly indicate that the date for which construction, modification, or reconstruction was commenced is the applicability date for the NSPS provisions.

Comment: One commenter objected to the proposed amendment to the like-for-like replacement language in § 60.670(d)(1) to add the phrase ''and

there is no increase in the amount of emissions.'' The commenter requested that the version of § 60.670(d)(1) that has been in subpart OOO since 1985 be retained. The commenter stated that since no replacement of equipment would ever trigger the NSPS or new source review modification rules without an increase in the amount of emissions, the effect of the proposed change would be to remove an exemption that had applied to the replacement of equipment of equal or smaller size, regardless of its effect on emissions.

Response: As indicated in the proposal, the addition of the language providing that the like-for-like replacement provision is only available where ''there is no increase in the amount of emissions'' was intended as a clarification rather than a change. That is, the Agency interprets the existing exemption in § 60.670(d)(1) as being limited to such circumstances where there is no increase in emissions. While the commenter alleges that this is a change, they have not identified any instance where the Agency interpreted the existing provision to permit like-for-like replacements where an emissions increase occurs (*i.e.,* that the proposed language constitutes a change rather than a clarification). Accordingly, we disagree that we are narrowing or changing the regulation with the addition of the clarifying language. Moreover, contrary to the commenter's contention, limiting the exemption to like-for-like replacements that do not result in an increase in emissions does not render the like-for-like exemption meaningless. The provision continues to allow like-for-like replacements that do not increase emissions, which we believe to be the vast majority of cases because the replacement units must be of equal or smaller size (*e.g.,* rated capacity).

H. Cost Impacts

Comment: Several commenters argued that there are incremental costs associated with meeting the revised stack limit of 0.014 gr/dscf and requested that EPA analyze these costs. The commenters stated that companies operate their equipment at a lower emission rate than the applicable standard to have a compliance margin. Commenters stated that the revised stack limit of 0.014 gr/dscf would require a higher-efficiency baghouse design and bags, resulting in incremental capital costs. One commenter stated that one or more of the following baghouse design improvements may be required: Decreased air-to-cloth ratio, upgraded bag material (*i.e.,* membrane coated bags), additional baghouse chambers, and bag leak detectors. Commenters also stated that increased baghouse maintenance would be required if the tighter grain loading standard is implemented (*e.g.,* more frequent bag replacement) and that the associated incremental costs should be considered.

Response: We disagree with commenters that significant upgrades to baghouses would be required to meet a PM limit of 0.014 gr/dscf. Ninety-one percent of the stack tests we reviewed achieved 0.014 gr/dscf, and many of these tests achieved 0.014 gr/dscf with a substantial compliance margin. A level of 0.010 gr/dscf was achieved in 86 percent of the tests and a level of 0.005 gr/dscf was achieved in 68 percent of tests. Given these test results, we concluded at proposal that control systems that would be installed to meet a limit of 0.014 gr/dscf would be the same as those installed to meet the NSPS limit of 0.022 gr/dscf. Because there would be no change in control technology, we concluded that the incremental costs would be very low or zero.

Although we disagree (based on the available NMPP stack emissions data) that there are any incremental costs associated with reducing the stack PM emission limit from 0.022 to 0.014 gr/dscf, we evaluated the incremental costs suggested by commenters that could potentially be incurred in the event that some facilities choose to upgrade the type of baghouse they use for new affected facilities. Our incremental cost analysis is documented in a memorandum available in Docket EPA–HQ–OAR–2007–1018. We explored four scenarios in our costing analysis similar to the suggestions by commenters (a baseline scenario with a limit of 0.022 gr/dscf and three other scenarios, A through C, each with a limit of 0.014 gr/dscf). As suggested by commenters, the costs of more frequent bag replacement were associated with scenarios A–C. We disagree that bag leak detectors would be required to demonstrate continuous compliance with a limit of 0.014 gr/dscf since the subpart OOO revisions allow for a less expensive method of compliance (*i.e.,* quarterly VE checks), and, therefore, we did not include BLD costs in any of the scenarios explored. Assuming as a worst case that all projected facilities would elect to upgrade the type of baghouse they use, the 5-year nationwide incremental costs ranged from $1.1 to 1.6 million total capital cost and $0.18 to 0.30 million total annualized cost. The worst case incremental cost effectiveness is less than $2,300 per ton of PM removed. We believe these worst case costs are acceptable and reasonable. Therefore, we maintain that a stack limit of 0.014 gr/dscf represents BDT for new, modified, and reconstructed NMPP affected facilities and this limit is being promulgated as proposed.

V. Summary of Cost, Environmental, Energy, and Economic Impacts of Final Amendments to Subpart OOO

A. What are the impacts for NMPP?

We are presenting estimates of the impacts for these final amendments to 40 CFR part 60, subpart OOO that change the performance standards. The cost, environmental, and economic impacts presented in this section are expressed as incremental differences between the impacts of NMPP complying with the subpart OOO revisions and the current NSPS requirements of subpart OOO (*i.e.,* baseline). The impacts are presented for NMPP affected facilities for which construction, modification, or reconstruction is expected to commence over the 5 years following promulgation of the revised NSPS. The analyses and the documents referenced below can be found in Docket ID No. EPA–HQ–OAR–2007–1018.

In order to determine the incremental impacts of this final rule, we first estimated that 332 new NMPP would comply with subpart OOO in the 5 years following promulgation. For further detail on the methodology of these calculations, see Docket ID No. EPA–HQ–OAR–2007–1018.

The revisions to the subpart OOO emission limits for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, do not reflect use of new or different control technologies, but are an adjustment of the limits to better reflect the performance of current (baseline) control technologies. For the most part, there is no difference in the control systems used to meet baseline and those that would be used to meet the revised emission limits for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008. Therefore, there would be no difference in control costs, water or solid waste impacts, or actual emission reductions achieved as a result of the revisions to the emission limits. However, as discussed previously, we estimated potential incremental costs of upgrades to baghouse controls (*e.g.,* more frequent bag replacement, membrane coated bags, or use of a multi-compartment baghouse) in the event that some NMPP choose to operate with such upgrades. We

estimate the worst case potential increase in nationwide annualized cost associated with baghouse upgrades to be $300,000 per year. The effect of reducing the emission limits is to ensure that the typical performance of today's control systems is achieved for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008. The potential nationwide emission reduction (the nationwide emission reduction associated with lowering the PM limit from 0.022 to 0.014 gr/dscf) could be as much as 120 megagrams per year (Mg/yr) (130 tons per year (tpy)) PM. These potential emission reductions are overestimated because the majority of control systems installed on affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, would likely have resulted in emissions at or below the emission limits even in the absence of these revisions.

There are differences in notification; testing; monitoring, reporting, and recordkeeping (MRR) costs between baseline and the final revisions to subpart OOO. We are making some amendments to subpart OOO that will reduce costs and other amendments that will increase costs for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008. We estimate that the increase in nationwide annual cost associated with the MRR revisions, including annualized capital costs associated with performance testing, is about $630,000. The potential emissions reductions associated with the MRR revisions are estimated to be 330 Mg/yr (370 tpy) due to the shortened duration that excess emissions could occur before being corrected under these final testing and monitoring revisions.

The estimated nationwide 5-year incremental emissions reductions and cost impacts for these amendments are summarized in Table 2 of this preamble. The overall cost-effectiveness is about $1,900 per ton of PM potentially removed. We estimate that 6 percent (or 28 Mg/yr (25 tpy)) of the potential reduction in PM shown in Table 2 is PM less than 2.5 microns in diameter ($PM_{2.5}$).

TABLE 2—NATIONAL INCREMENTAL EMISSION REDUCTIONS AND COST IMPACTS FOR NMPP SUBJECT TO FINAL STANDARDS UNDER 40 CFR PART 60, SUBPART OOO (FIFTH YEAR AFTER PROMULGATION)

Final revisions for affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008	Total capital cost [$1,000]	Total annual cost [$1,000/yr]	Potential annual emission reductions [tons/yr]	Potential cost-effectiveness [$/ton]
Revisions to emission limits	1,400	300	130	2,300
Revisions to MRR requirements	(1,800)	630	370	1,700
Total	(400)	930	500	1,900

(Negative numbers appear in parentheses. There is a negative capital cost because we are reducing the costs of initial testing requirements by (a) allowing a 30-minute Method 9 test instead of a 1-hour test for fugitive emissions; and (b) by omitting the 7 percent stack opacity limit and associated initial testing from subpart OOO. The reduced testing costs offset the potential increase in capital cost due to baghouse upgrades.)

B. What are the secondary impacts?

Indirect or secondary air quality impacts are impacts that result from the increased electricity usage associated with the operation of control devices (*i.e.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment that are required under this final rule. These revisions will not result in secondary air impacts or increase in overall energy demand because there is little (if any) incremental difference in the control systems used to comply with these revisions.

C. What are the economic impacts?

We performed an economic impact analysis that estimates changes in prices and output for nonmetallic minerals nationally using the annual compliance costs estimated for this final rule. All estimates are for the fifth year after promulgation since this is the year for which the compliance cost impacts are estimated. The impacts to producers and consumers affected by this final rule are very slightly higher product prices and outputs. Prices for products (processed minerals) from affected plants should increase by less than 0.1 percent for the fifth year. The output of processed minerals should be affected by less than 0.1 percent for the fifth year. Hence, the overall economic impact of this final rule on the affected industries and their consumers should be negligible. For more information, please refer to the economic impact analysis for this final rule that is in the public docket.

VI. No Final Action Taken With Respect to Subpart UUU Applicability

As part of the proposal notice, we requested comment on the applicability of the NSPS for Mineral Calciners and Dryers (40 CFR Part 60, subpart UUU) to sand reclamation processes at metal foundries. We proposed to amend § 60.730(b) of subpart UUU to state that ''processes for thermal reclamation of industrial sand at metal foundries'' are not subject to the provisions of subpart UUU. After further consideration, we are not taking any final action with respect to this proposed amendment to subpart UUU at this time.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

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

These final amendments to the existing standards of performance for Nonmetallic Mineral Processing Plants add monitoring requirements for affected facilities that commence construction, modification, or

reconstruction on or after April 22, 2008, while eliminating other requirements. We have revised the information collection request (ICR) for the existing rule.

These final amendments to the standards of performance for NMPP for affected facilities include a reduction in Method 9 test duration for fugitive emissions, exemption of wet material processing operations, and changes to simplify the notification requirements. Additional revisions to affected facilities that commence construction, modification, or reconstruction on or after April 22, 2008, include changes to emission limits, elimination of the stack opacity limit, and addition of periodic monitoring requirements. The monitoring requirements include periodic inspections of water sprays and baghouse VE. We have minimized the burden associated with these monitoring requirements by selecting longer frequencies for the requirements (*e.g.,* repeat tests every 5 years as opposed to annually; monthly inspections of water sprays as opposed to daily, etc.); minimizing duplication of continuous compliance measures; and by not specifying additional reporting requirements for the periodic inspection provisions. These requirements are based on recordkeeping and reporting requirements in the NSPS General Provisions in 40 CFR part 60, subpart A, and on specific requirements in subpart OOO which are mandatory for all operators subject to NSPS. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 11,330 labor-hours per year at a cost of $1,030,642 per year. The annualized capital costs are estimated at $154,577 per year. There are no estimated annual operation and maintenance costs. We note that information collection costs to industry are also included in the incremental cost impacts presented in section VII of this preamble. Therefore, the burden costs presented in the ICR are not additional costs incurred by sources subject to subpart OOO. 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. OMB control numbers for EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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 will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of these revisions to subpart OOO on small entities, small entity is defined as: (1) A small business whose parent company has no more than 500 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) size standards found at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*); (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 impact of these revisions to subpart OOO on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We estimate that up to 96 percent (318) of the 332 entities of the projected new NMPP could potentially be classified as small entities according to the SBA small business size standards for industries identified as affected by today's revisions. No small entities are expected to incur an annualized compliance cost of more than 0.10 percent to comply with today's action. For more information, please refer to the economic impact analysis that is in the public docket for this rulemaking.

Although this action would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this action on small entities by reducing the test duration for fugitive emissions, exempting wet material processing operations, simplifying certain notification requirements, eliminating the stack opacity limit, and selecting relatively low-cost repeat testing and monitoring provisions. In addition, certain plants operating at small capacities were exempted from subpart OOO due to economic considerations when the standards were originally developed. These revisions to subpart OOO do not affect these exempted small plants; that is, they continue to be exempted from the standards.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after promulgation are $0.93 million. Thus, this final rule is not subject to the requirements of section 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 action contains no requirements that apply to such governments, imposes no obligations upon them, and will 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, 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.''

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. None of the affected facilities are owned or operated

by State governments. Thus, Executive Order 13132 does not apply to this final rule.

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

This final action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It 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. This final rule imposes requirements on owners and operators of specified industrial facilities and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This final action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 18355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this final rule is not likely to have any adverse energy effects because the only energy requirements associated with this action result from monitoring equipment.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 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. 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 rulemaking involves technical standards. EPA has decided to use EPA Methods 5, 5I, 9, 17, and 22, of 40 CFR 60, Appendix A. The Agency conducted a search to identify potentially applicable VCS. We identified no standards for Methods 9 and 22, and none were brought to our attention in public comments. While the Agency identified five VCS as being potentially applicable to EPA Methods 5, 5I, or 17, we have decided not to use them in this rulemaking. The use of these VCS would be impractical for the purposes of this final rule. See the docket of this final rule for the reasons for these determinations on the standards.

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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule will reduce emissions of PM from all new, reconstructed, or modified affected facilities at NMPP, decreasing the amount of such emissions to which all affected populations are exposed.

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 the 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 the 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 April 28, 2009.

List of Subjects in 40 CFR Part 60

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

Dated: April 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart OOO—[AMENDED]

■ 2. Revise subpart OOO to read as follows:

Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants

Sec.

Tables to Subpart OOO of Part 60

Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants

§ 60.670 Applicability and designation of affected facility.

(a)(1) Except as provided in paragraphs (a)(2), (b), (c), and (d) of this section, the provisions of this subpart

are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of this subpart.

(2) The provisions of this subpart do not apply to the following operations: All facilities located in underground mines; plants without crushers or grinding mills above ground; and wet material processing operations (as defined in § 60.671).

(b) An affected facility that is subject to the provisions of subparts F or I of this part or that follows in the plant process any facility subject to the provisions of subparts F or I of this part is not subject to the provisions of this subpart.

(c) Facilities at the following plants are not subject to the provisions of this subpart:

(1) Fixed sand and gravel plants and crushed stone plants with capacities, as defined in § 60.671, of 23 megagrams per hour (25 tons per hour) or less;

(2) Portable sand and gravel plants and crushed stone plants with capacities, as defined in § 60.671, of 136 megagrams per hour (150 tons per hour) or less; and

(3) Common clay plants and pumice plants with capacities, as defined in § 60.671, of 9 megagrams per hour (10 tons per hour) or less.

(d)(1) When an existing facility is replaced by a piece of equipment of equal or smaller size, as defined in § 60.671, having the same function as the existing facility, and there is no increase in the amount of emissions, the new facility is exempt from the provisions of §§ 60.672, 60.674, and 60.675 except as provided for in paragraph (d)(3) of this section.

(2) An owner or operator complying with paragraph (d)(1) of this section shall submit the information required in § 60.676(a).

(3) An owner or operator replacing all existing facilities in a production line with new facilities does not qualify for the exemption described in paragraph (d)(1) of this section and must comply with the provisions of §§ 60.672, 60.674 and 60.675.

(e) An affected facility under paragraph (a) of this section that commences construction, modification, or reconstruction after August 31, 1983, is subject to the requirements of this part.

(f) Table 1 of this subpart specifies the provisions of subpart A of this part 60 that do not apply to owners and operators of affected facilities subject to this subpart or that apply with certain exceptions.

§ 60.671 Definitions.

All terms used in this subpart, but not specifically defined in this section, shall have the meaning given them in the Act and in subpart A of this part.

Bagging operation means the mechanical process by which bags are filled with nonmetallic minerals.

Belt conveyor means a conveying device that transports material from one location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end.

Bucket elevator means a conveying device of nonmetallic minerals consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached.

Building means any frame structure with a roof.

Capacity means the cumulative rated capacity of all initial crushers that are part of the plant.

Capture system means the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport particulate matter generated by one or more affected facilities to a control device.

Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more affected facilities at a nonmetallic mineral processing plant.

Conveying system means a device for transporting materials from one piece of equipment or location to another location within a plant. Conveying systems include but are not limited to the following: Feeders, belt conveyors, bucket elevators and pneumatic systems.

Crush or *Crushing* means to reduce the size of nonmetallic mineral material by means of physical impaction of the crusher or grinding mill upon the material.

Crusher means a machine used to crush any nonmetallic minerals, and includes, but is not limited to, the following types: Jaw, gyratory, cone, roll, rod mill, hammermill, and impactor.

Enclosed truck or railcar loading station means that portion of a nonmetallic mineral processing plant where nonmetallic minerals are loaded by an enclosed conveying system into enclosed trucks or railcars.

Fixed plant means any nonmetallic mineral processing plant at which the processing equipment specified in § 60.670(a) is attached by a cable, chain, turnbuckle, bolt or other means (except electrical connections) to any anchor, slab, or structure including bedrock.

Fugitive emission means particulate matter that is not collected by a capture system and is released to the atmosphere at the point of generation.

Grinding mill means a machine used for the wet or dry fine crushing of any nonmetallic mineral. Grinding mills include, but are not limited to, the following types: Hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used.

Initial crusher means any crusher into which nonmetallic minerals can be fed without prior crushing in the plant.

Nonmetallic mineral means any of the following minerals or any mixture of which the majority is any of the following minerals:

(1) Crushed and Broken Stone, including Limestone, Dolomite, Granite, Traprock, Sandstone, Quartz, Quartzite, Marl, Marble, Slate, Shale, Oil Shale, and Shell.

(2) Sand and Gravel.

(3) Clay including Kaolin, Fireclay, Bentonite, Fuller's Earth, Ball Clay, and Common Clay.

(4) Rock Salt.

(5) Gypsum (natural or synthetic).

(6) Sodium Compounds, including Sodium Carbonate, Sodium Chloride, and Sodium Sulfate.

(7) Pumice.

(8) Gilsonite.

(9) Talc and Pyrophyllite.

(10) Boron, including Borax, Kernite, and Colemanite.

(11) Barite.

(12) Fluorospar.

(13) Feldspar.

(14) Diatomite.

(15) Perlite.

(16) Vermiculite.

(17) Mica.

(18) Kyanite, including Andalusite, Sillimanite, Topaz, and Dumortierite.

Nonmetallic mineral processing plant means any combination of equipment that is used to crush or grind any nonmetallic mineral wherever located, including lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility processing nonmetallic minerals except as provided in § 60.670 (b) and (c).

Portable plant means any nonmetallic mineral processing plant that is

mounted on any chassis or skids and may be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit.

Production line means all affected facilities (crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, and enclosed truck and railcar loading stations) which are directly connected or are connected together by a conveying system.

Saturated material means, for purposes of this subpart, mineral material with sufficient surface moisture such that particulate matter emissions are not generated from processing of the material through screening operations, bucket elevators and belt conveyors. Material that is wetted solely by wet suppression systems is not considered to be ''saturated'' for purposes of this definition.

Screening operation means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens). Grizzly feeders associated with truck dumping and static (non-moving) grizzlies used anywhere in the nonmetallic mineral processing plant are not considered to be screening operations.

Seasonal shut down means shut down of an affected facility for a period of at least 45 consecutive days due to weather or seasonal market conditions.

Size means the rated capacity in tons per hour of a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station; the total surface area of the top screen of a screening operation; the width of a conveyor belt; and the rated capacity in tons of a storage bin.

Stack emission means the particulate matter that is released to the atmosphere from a capture system.

Storage bin means a facility for storage (including surge bins) of nonmetallic minerals prior to further processing or loading.

Transfer point means a point in a conveying operation where the nonmetallic mineral is transferred to or from a belt conveyor except where the nonmetallic mineral is being transferred to a stockpile.

Truck dumping means the unloading of nonmetallic minerals from movable vehicles designed to transport nonmetallic minerals from one location to another. Movable vehicles include but are not limited to: Trucks, front end loaders, skip hoists, and railcars.

Vent means an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one or more affected facilities.

Wet material processing operation(s) means any of the following:

(1) Wet screening operations (as defined in this section) and subsequent screening operations, bucket elevators and belt conveyors in the production line that process saturated materials (as defined in this section) up to the first crusher, grinding mill or storage bin in the production line; or

(2) Screening operations, bucket elevators and belt conveyors in the production line downstream of wet mining operations (as defined in this section) that process saturated materials (as defined in this section) up to the first crusher, grinding mill or storage bin in the production line.

Wet mining operation means a mining or dredging operation designed and operated to extract any nonmetallic mineral regulated under this subpart from deposits existing at or below the water table, where the nonmetallic mineral is saturated with water.

Wet screening operation means a screening operation at a nonmetallic mineral processing plant which removes unwanted material or which separates marketable fines from the product by a washing process which is designed and operated at all times such that the product is saturated with water.

§ 60.672 Standard for particulate matter (PM).

(a) Affected facilities must meet the stack emission limits and compliance requirements in Table 2 of this subpart within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.8. The requirements in Table 2 of this subpart apply for affected facilities with capture systems used to capture and transport particulate matter to a control device.

(b) Affected facilities must meet the fugitive emission limits and compliance requirements in Table 3 of this subpart within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11. The requirements in Table 3 of this subpart apply for fugitive emissions from affected facilities without capture systems and for fugitive emissions escaping capture systems.

(c) [Reserved]

(d) Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of this section.

(e) If any transfer point on a conveyor belt or any other affected facility is enclosed in a building, then each enclosed affected facility must comply with the emission limits in paragraphs (a) and (b) of this section, or the building enclosing the affected facility or facilities must comply with the following emission limits:

(1) Fugitive emissions from the building openings (except for vents as defined in § 60.671) must not exceed 7 percent opacity; and

(2) Vents (as defined in § 60.671) in the building must meet the applicable stack emission limits and compliance requirements in Table 2 of this subpart.

(f) Any baghouse that controls emissions from only an individual, enclosed storage bin is exempt from the applicable stack PM concentration limit (and associated performance testing) in Table 2 of this subpart but must meet the applicable stack opacity limit and compliance requirements in Table 2 of this subpart. This exemption from the stack PM concentration limit does not apply for multiple storage bins with combined stack emissions.

§ 60.673 Reconstruction.

(a) The cost of replacement of ore-contact surfaces on processing equipment shall not be considered in calculating either the ''fixed capital cost of the new components'' or the ''fixed capital cost that would be required to construct a comparable new facility'' under § 60.15. Ore-contact surfaces are crushing surfaces; screen meshes, bars, and plates; conveyor belts; and elevator buckets.

(b) Under § 60.15, the ''fixed capital cost of the new components'' includes the fixed capital cost of all depreciable components (except components specified in paragraph (a) of this section) which are or will be replaced pursuant to all continuous programs of component replacement commenced within any 2-year period following August 31, 1983.

§ 60.674 Monitoring of operations.

(a) The owner or operator of any affected facility subject to the provisions of this subpart which uses a wet scrubber to control emissions shall install, calibrate, maintain and operate the following monitoring devices:

(1) A device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascals ±1 inch water gauge pressure and must be calibrated on an annual basis in accordance with manufacturer's instructions.

(2) A device for the continuous measurement of the scrubbing liquid flow rate to the wet scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±5 percent of design scrubbing liquid flow rate and must be calibrated on an annual basis in accordance with manufacturer's instructions.

(b) The owner or operator of any affected facility for which construction, modification, or reconstruction commenced on or after April 22, 2008, that uses wet suppression to control emissions from the affected facility must perform monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system. The owner or operator must initiate corrective action within 24 hours and complete corrective action as expediently as practical if the owner or operator finds that water is not flowing properly during an inspection of the water spray nozzles. The owner or operator must record each inspection of the water spray nozzles, including the date of each inspection and any corrective actions taken, in the logbook required under § 60.676(b).

(1) If an affected facility relies on water carryover from upstream water sprays to control fugitive emissions, then that affected facility is exempt from the 5-year repeat testing requirement specified in Table 3 of this subpart provided that the affected facility meets the criteria in paragraphs (b)(1)(i) and (ii) of this section:

(i) The owner or operator of the affected facility conducts periodic inspections of the upstream water spray(s) that are responsible for controlling fugitive emissions from the affected facility. These inspections are conducted according to paragraph (b) of this section and § 60.676(b), and

(ii) The owner or operator of the affected facility designates which upstream water spray(s) will be periodically inspected at the time of the initial performance test required under § 60.11 of this part and § 60.675 of this subpart.

(2) If an affected facility that routinely uses wet suppression water sprays ceases operation of the water sprays or is using a control mechanism to reduce fugitive emissions other than water sprays during the monthly inspection (for example, water from recent rainfall), the logbook entry required under § 60.676(b) must specify the control mechanism being used instead of the water sprays.

(c) Except as specified in paragraph (d) or (e) of this section, the owner or operator of any affected facility for which construction, modification, or reconstruction commenced on or after April 22, 2008, that uses a baghouse to control emissions must conduct quarterly 30-minute visible emissions inspections using EPA Method 22 (40 CFR part 60, Appendix A–7). The Method 22 (40 CFR part 60, Appendix A–7) test shall be conducted while the baghouse is operating. The test is successful if no visible emissions are observed. If any visible emissions are observed, the owner or operator of the affected facility must initiate corrective action within 24 hours to return the baghouse to normal operation. The owner or operator must record each Method 22 (40 CFR part 60, Appendix A–7) test, including the date and any corrective actions taken, in the logbook required under § 60.676(b). The owner or operator of the affected facility may establish a different baghouse-specific success level for the visible emissions test (other than no visible emissions) by conducting a PM performance test according to § 60.675(b) simultaneously with a Method 22 (40 CFR part 60, Appendix A–7) to determine what constitutes normal visible emissions from that affected facility's baghouse when it is in compliance with the applicable PM concentration limit in Table 2 of this subpart. The revised visible emissions success level must be incorporated into the permit for the affected facility.

(d) As an alternative to the periodic Method 22 (40 CFR part 60, Appendix A–7) visible emissions inspections specified in paragraph (c) of this section, the owner or operator of any affected facility for which construction, modification, or reconstruction commenced on or after April 22, 2008, that uses a baghouse to control emissions may use a bag leak detection system. The owner or operator must install, operate, and maintain the bag leak detection system according to paragraphs (d)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard 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. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (d)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, the owner or operator must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, the owner or operator shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (d)(1)(vi) of this section.

(vi) Once per quarter, the owner or operator may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (d)(2) of this section.

(vii) The owner or operator must install the bag leak detection sensor downstream of the fabric filter.

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

(2) The owner or operator of the affected facility must develop and submit to the Administrator or delegated authority for approval of a site-specific monitoring plan for each bag leak detection system. The owner or operator must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (d)(2)(i) through (vi) 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 will be established;

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

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

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

(vi) Corrective action procedures as specified in paragraph (d)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, the owner or operator must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (d)(2)(vi) of this section, the owner or operator must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

(e) As an alternative to the periodic Method 22 (40 CFR part 60, Appendix A–7) visible emissions inspections specified in paragraph (c) of this section, the owner or operator of any affected facility that is subject to the requirements for processed stone handling operations in the Lime Manufacturing NESHAP (40 CFR part 63, subpart AAAAA) may follow the continuous compliance requirements in row 1 items (i) through (iii) of Table 6 to Subpart AAAAA of 40 CFR part 63.

§ 60.675 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendices A–1 through A–7 of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the PM standards in § 60.672(a) as follows:

(1) Except as specified in paragraphs (e)(3) and (4) of this section, Method 5 of Appendix A–3 of this part or Method 17 of Appendix A–6 of this part shall be used to determine the particulate matter concentration. The sample volume shall be at least 1.70 dscm (60 dscf). For Method 5 (40 CFR part 60, Appendix A–3), if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters. If the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121 °C (250 °F), to prevent water condensation on the filter.

(2) Method 9 of Appendix A–4 of this part and the procedures in § 60.11 shall be used to determine opacity.

(c)(1) In determining compliance with the particulate matter standards in § 60.672(b) or § 60.672(e)(1), the owner or operator shall use Method 9 of Appendix A–4 of this part and the procedures in § 60.11, with the following additions:

(i) The minimum distance between the observer and the emission source shall be 4.57 meters (15 feet).

(ii) The observer shall, when possible, select a position that minimizes interference from other fugitive emission sources (*e.g.,* road dust). The required observer position relative to the sun (Method 9 of Appendix A–4 of this part, Section 2.1) must be followed.

(iii) For affected facilities using wet dust suppression for particulate matter control, a visible mist is sometimes generated by the spray. The water mist must not be confused with particulate matter emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made at a point in the plume where the mist is no longer visible.

(2)(i) In determining compliance with the opacity of stack emissions from any baghouse that controls emissions only from an individual enclosed storage bin under § 60.672(f) of this subpart, using Method 9 (40 CFR part 60, Appendix A–4), the duration of the Method 9 (40 CFR part 60, Appendix A–4) observations shall be 1 hour (ten 6-minute averages).

(ii) The duration of the Method 9 (40 CFR part 60, Appendix A–4) observations may be reduced to the duration the affected facility operates (but not less than 30 minutes) for baghouses that control storage bins or enclosed truck or railcar loading stations that operate for less than 1 hour at a time.

(3) When determining compliance with the fugitive emissions standard for any affected facility described under § 60.672(b) or § 60.672(e)(1) of this subpart, the duration of the Method 9 (40 CFR part 60, Appendix A–4) observations must be 30 minutes (five 6-minute averages). Compliance with the applicable fugitive emission limits in Table 3 of this subpart must be based on the average of the five 6-minute averages.

(d) To demonstrate compliance with the fugitive emission limits for buildings specified in § 60.672(e)(1), the owner or operator must complete the testing specified in paragraph (d)(1) and (2) of this section. Performance tests must be conducted while all affected facilities inside the building are operating.

(1) If the building encloses any affected facility that commences construction, modification, or reconstruction on or after April 22, 2008, the owner or operator of the affected facility must conduct an initial Method 9 (40 CFR part 60, Appendix A–4) performance test according to this section and § 60.11.

(2) If the building encloses only affected facilities that commenced construction, modification, or reconstruction before April 22, 2008, and the owner or operator has previously conducted an initial Method 22 (40 CFR part 60, Appendix A–7) performance test showing zero visible emissions, then the owner or operator has demonstrated compliance with the opacity limit in § 60.672(e)(1). If the owner or operator has not conducted an initial performance test for the building before April 22, 2008, then the owner or operator must conduct an initial Method 9 (40 CFR part 60, Appendix A–4) performance test according to this section and § 60.11 to show compliance with the opacity limit in § 60.672(e)(1).

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For the method and procedure of paragraph (c) of this section, if emissions from two or more facilities continuously interfere so that the opacity of fugitive emissions from an individual affected facility cannot be

read, either of the following procedures may be used:

(i) Use for the combined emission stream the highest fugitive opacity standard applicable to any of the individual affected facilities contributing to the emissions stream.

(ii) Separate the emissions so that the opacity of emissions from each affected facility can be read.

(2) A single visible emission observer may conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval if the following conditions are met:

(i) No more than three emission points may be read concurrently.

(ii) All three emission points must be within a 70 degree viewing sector or angle in front of the observer such that the proper sun position can be maintained for all three points.

(iii) If an opacity reading for any one of the three emission points equals or exceeds the applicable standard, then the observer must stop taking readings for the other two points and continue reading just that single point.

(3) Method 5I of Appendix A–3 of this part may be used to determine the PM concentration as an alternative to the methods specified in paragraph (b)(1) of this section. Method 5I (40 CFR part 60, Appendix A–3) may be useful for affected facilities that operate for less than 1 hour at a time such as (but not limited to) storage bins or enclosed truck or railcar loading stations.

(4) In some cases, velocities of exhaust gases from building vents may be too low to measure accurately with the type S pitot tube specified in EPA Method 2 of Appendix A–1 of this part [*i.e.,* velocity head <1.3 mm H_2O (0.05 in. H_2O)] and referred to in EPA Method 5 of Appendix A–3 of this part. For these conditions, the owner or operator may determine the average gas flow rate produced by the power fans (*e.g.,* from vendor-supplied fan curves) to the building vent. The owner or operator may calculate the average gas velocity at the building vent measurement site using Equation 1 of this section and use this average velocity in determining and maintaining isokinetic sampling rates.

$$v_e = \frac{Q_f}{A_e} \qquad \text{(Eq. 1)}$$

Where:

V_e = average building vent velocity (feet per minute);

Q_f = average fan flow rate (cubic feet per minute); and

A_e = area of building vent and measurement location (square feet).

(f) To comply with § 60.676(d), the owner or operator shall record the measurements as required in § 60.676(c) using the monitoring devices in § 60.674 (a)(1) and (2) during each particulate matter run and shall determine the averages.

(g) For performance tests involving only Method 9 (40 CFR part 60 Appendix A–4) testing, the owner or operator may reduce the 30-day advance notification of performance test in § 60.7(a)(6) and 60.8(d) to a 7-day advance notification.

(h) [Reserved]

(i) If the initial performance test date for an affected facility falls during a seasonal shut down (as defined in § 60.671 of this subpart) of the affected facility, then with approval from the permitting authority, the owner or operator may postpone the initial performance test until no later than 60 calendar days after resuming operation of the affected facility.

§ 60.676 Reporting and recordkeeping.

(a) Each owner or operator seeking to comply with § 60.670(d) shall submit to the Administrator the following information about the existing facility being replaced and the replacement piece of equipment.

(1) For a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station:

(i) The rated capacity in megagrams or tons per hour of the existing facility being replaced and

(ii) The rated capacity in tons per hour of the replacement equipment.

(2) For a screening operation:

(i) The total surface area of the top screen of the existing screening operation being replaced and

(ii) The total surface area of the top screen of the replacement screening operation.

(3) For a conveyor belt:

(i) The width of the existing belt being replaced and

(ii) The width of the replacement conveyor belt.

(4) For a storage bin:

(i) The rated capacity in megagrams or tons of the existing storage bin being replaced and

(ii) The rated capacity in megagrams or tons of replacement storage bins.

(b)(1) Owners or operators of affected facilities (as defined in §§ 60.670 and 60.671) for which construction, modification, or reconstruction commenced on or after April 22, 2008, must record each periodic inspection required under § 60.674(b) or (c), including dates and any corrective actions taken, in a logbook (in written or electronic format). The owner or operator must keep the logbook onsite and make hard or electronic copies (whichever is requested) of the logbook available to the Administrator upon request.

(2) For each bag leak detection system installed and operated according to § 60.674(d), the owner or operator must keep the records specified in paragraphs (b)(2)(i) through (iii) of this section.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the cause of the alarm was alleviated within 3 hours of the alarm.

(3) The owner or operator of each affected facility demonstrating compliance according to § 60.674(e) by following the requirements for processed stone handling operations in the Lime Manufacturing NESHAP (40 CFR part 63, subpart AAAAA) must maintain records of visible emissions observations required by § 63.7132(a)(3) and (b) of 40 CFR part 63, subpart AAAAA.

(c) During the initial performance test of a wet scrubber, and daily thereafter, the owner or operator shall record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate.

(d) After the initial performance test of a wet scrubber, the owner or operator shall submit semiannual reports to the Administrator of occurrences when the measurements of the scrubber pressure loss and liquid flow rate decrease by more than 30 percent from the average determined during the most recent performance test.

(e) The reports required under paragraph (d) of this section shall be postmarked within 30 days following end of the second and fourth calendar quarters.

(f) The owner or operator of any affected facility shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in § 60.672 of this subpart, including reports of opacity observations made using Method 9 (40 CFR part 60, Appendix A–4) to demonstrate compliance with § 60.672(b), (e) and (f).

(g) The owner or operator of any wet material processing operation that processes saturated and subsequently processes unsaturated materials, shall submit a report of this change within 30 days following such change. At the time of such change, this screening operation, bucket elevator, or belt conveyor becomes subject to the applicable opacity limit in § 60.672(b) and the emission test requirements of § 60.11.

(h) The subpart A requirement under § 60.7(a)(1) for notification of the date construction or reconstruction commenced is waived for affected facilities under this subpart.

(i) A notification of the actual date of initial startup of each affected facility shall be submitted to the Administrator.

(1) For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of startup may be submitted by the owner or operator to the Administrator. The notification shall be postmarked within 15 days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.

(2) For portable aggregate processing plants, the notification of the actual date of initial startup shall include both the home office and the current address or location of the portable plant.

(j) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected facilities within the State will be relieved of the obligation to comply with the reporting requirements of this section, provided that they comply with requirements established by the State.

(k) Notifications and reports required under this subpart and under subpart A of this part to demonstrate compliance with this subpart need only to be sent to the EPA Region or the State which has been delegated authority according to § 60.4(b).

TABLE 1 TO SUBPART OOO—EXCEPTIONS TO APPLICABILITY OF SUBPART A TO SUBPART OOO

Subpart A reference	Applies to subpart OOO	Explanation
60.4, Address	Yes	Except in § 60.4(a) and (b) submittals need not be submitted to both the EPA Region and delegated State authority (§ 60.676(k)).
60.7, Notification and recordkeeping	Yes	Except in (a)(1) notification of the date construction or reconstruction commenced (§ 60.676(h)). Also, except in (a)(6) performance tests involving only Method 9 (40 CFR part 60, Appendix A–4) require a 7-day advance notification instead of 30 days (§ 60.675(g)).
60.8, Performance tests	Yes	Except in (d) performance tests involving only Method 9 (40 CFR part 60, Appendix A–4) require a 7-day advance notification instead of 30 days (§ 60.675(g)).
60.11, Compliance with standards and maintenance requirements.	Yes	Except in (b) under certain conditions (§§ 60.675(c)), Method 9 (40 CFR part 60, Appendix A–4) observation is reduced from 3 hours to 30 minutes for fugitive emissions.
60.18, General control device	No	Flares will not be used to comply with the emission limits.

TABLE 2 TO SUBPART OOO—STACK EMISSION LIMITS FOR AFFECTED FACILITIES WITH CAPTURE SYSTEMS

For * * *	The owner or operator must meet a PM limit of * * *	And the owner or operator must meet an opacity limit of * * *	The owner or operator must demonstrate compliance with these limits by conducting * * *
Affected facilities (as defined in §§ 60.670 and 60.671) that commenced construction, modification, or reconstruction after August 31, 1983 but before April 22, 2008.	0.05 g/dscm (0.022 gr/dscf) [a]	7 percent for dry control devices [b]	An initial performance test according to § 60.8 of this part and § 60.675 of this subpart; and Monitoring of wet scrubber parameters according to § 60.674(a) and § 60.676(c), (d), and (e).
Affected facilities (as defined in §§ 60.670 and 60.671) that commence construction, modification, or reconstruction on or after April 22, 2008.	0.032 g/dscm (0.014 gr/dscf) [a]	Not applicable (except for individual enclosed storage bins). 7 percent for dry control devices on individual enclosed storage bins.	An initial performance test according to § 60.8 of this part and § 60.675 of this subpart; and Monitoring of wet scrubber parameters according to § 60.674(a) and § 60.676(c), (d), and (e); and Monitoring of baghouses according to § 60.674(c), (d), or (e) and § 60.676(b).

[a] Exceptions to the PM limit apply for individual enclosed storage bins and other equipment. See § 60.672(d) through (f).

[b] The stack opacity limit and associated opacity testing requirements do not apply for affected facilities using wet scrubbers.

TABLE 3 TO SUBPART OOO—FUGITIVE EMISSION LIMITS

For * * *	The owner or operator must meet the following fugitive emissions limit for grinding mills, screening operations, bucket elevators, transfer points on belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations or from any other affected facility (as defined in §§ 60.670 and 60.671) * * *	The owner or operator must meet the following fugitive emissions limit for crushers at which a capture system is not used * * *	The owner or operator must demonstrate compliance with these limits by conducting * * *
Affected facilities (as defined in §§ 60.670 and 60.671) that commenced construction, modification, or reconstruction after August 31, 1983 but before April 22, 2008.	10 percent opacity	15 percent opacity	An initial performance test according to § 60.11 of this part and § 60.675 of this subpart.
Affected facilities (as defined in §§ 60.670 and 60.671) that commence construction, modification, or reconstruction on or after April 22, 2008.	7 percent opacity	12 percent opacity	An initial performance test according to § 60.11 of this part and § 60.675 of this subpart; and Periodic inspections of water sprays according to § 60.674(b) and § 60.676(b); and A repeat performance test according to § 60.11 of this part and § 60.675 of this subpart within 5 years from the previous performance test for fugitive emissions from affected facilities without water sprays. Affected facilities controlled by water carryover from upstream water sprays that are inspected according to the requirements in § 60.674(b) and § 60.676(b) are exempt from this 5-year repeat testing requirement.

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