

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2017-0662; FRL-10005-06-OAR]

RIN 2060-AT34

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Asphalt Processing and Asphalt Roofing Manufacturing source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action to: Correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise monitoring requirements for a control device used to comply with the particulate matter (PM) standards; add requirements for periodic performance testing; add electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and Notification of Compliance Status (NOCS) reports; and include other technical corrections to improve consistency and clarity. We are making no revisions to the numerical emission limits based on the residual risk analysis or technology review. Although these amendments are not anticipated to result in reductions in emissions of hazardous air pollutants (HAP), they will improve compliance and implementation of the rule.

DATES: This final rule is effective on March 12, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 12, 2020.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2017-0662. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Tonisha Dawson, Sector Policies and Programs Division (D243-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1454; fax number: (919) 541-4991; and email address: dawson.tonisha@epa.gov. For specific information regarding the risk assessment, contact Matthew Woody, Health and Environmental Impacts Division (C539-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-1535; fax number: (919) 541-0840; and email address: woody.matthew@epa.gov. For information about the applicability of the NESHAP to a particular entity, contact John Cox, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, WJC South Building (2221A), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-1395; and email address: cox.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline levels
 APCD air pollution control device
 ASTM American Society for Testing and Materials
 ATSDR Agency for Toxic Substances and Disease Registry
 BACT best available control technology
 CAA Clean Air Act
 CalEPA California Environmental Protection Agency
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CFR Code of Federal Regulations
 CRA Congressional Review Act

DCOT digital camera opacity technique
 EPA Environmental Protection Agency
 ERPG Emergency Response Planning Guidelines
 FR Federal Register
 HAP hazardous air pollutant(s)
 HCl hydrogen chloride
 HI hazard index
 HQ hazard quotient
 IARC International Agency for Research on Cancer
 IBR incorporation by reference
 ICR information collection request
 IRIS Integrated Risk Information System
 km kilometer
 LAER lowest achievable emission rate
 MACT maximum achievable control technology
 MIR maximum individual risk
 NAICS North American Industry Classification System
 NESHAP national emission standards for hazardous air pollutants
 NOCS Notification of Compliance Status
 NRDC Natural Resources Defense Council
 NTTAA National Technology Transfer and Advancement Act
 OECA Office of Enforcement and Compliance Assurance
 OEHHA Office of Environmental Health Hazard Assessment
 OMB Office of Management and Budget
 PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
 PM particulate matter
 POM polycyclic organic matter
 PRA Paperwork Reduction Act
 RACT reasonably available control technology
 RBLC RACT/BACT/LAER Clearinghouse
 REL reference exposure level
 RFA Regulatory Flexibility Act
 RfC reference concentration
 RTR residual risk and technology review
 SSM startup, shutdown, and malfunction
 THC total hydrocarbons
 TOSHI target organ-specific hazard index
 tpy tons per year
 UMRA Unfunded Mandates Reform Act
 VCS voluntary consensus standards

Background information. On May 2, 2019, the EPA proposed results of the RTR and amendments to the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP. In this action, we are finalizing decisions regarding the RTR and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments are available in the *Summary of Public Comments and Responses for Risk and Technology Review for Asphalt Processing and Asphalt Roofing Manufacturing* document, which is available in the docket, Docket ID No. EPA-HQ-OAR-2017-0662. A "track changes" version of the regulatory language that

incorporates the changes in this action is also available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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- K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NESHAP	NAICS ¹ Code
Asphalt Processing	Asphalt Processing and Asphalt Roofing Manufacturing	324110
Asphalt Roofing Manufacturing	Asphalt Processing and Asphalt Roofing Manufacturing	324122

¹ North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: <https://www.epa.gov/stationary-sources-air-pollution/asphalt-processing-and-asphalt-roofing-manufacturing-national>.

Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at <https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html>. This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by May 11, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings

brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only 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 the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator 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 should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South 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 (2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. "Major sources" are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT

standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).¹ For more information on the statutory authority for this rule, see 84 FR 18926, May 2, 2019.

B. What are the Asphalt Processing and Asphalt Roofing Manufacturing source categories and how does the NESHAP regulate HAP emissions from the source categories?

The EPA promulgated the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP on April 29, 2003 (68 FR 22975). The standards are codified at 40 CFR part 63, subpart LLLLL. The asphalt processing industry consists of facilities that are engaged in the preparation and oxidation of asphalt flux. The asphalt roofing manufacturing industry consists of facilities that are engaged in the production of asphalt roofing products. As of December 15,

¹The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.")

2019, there were eight facilities in operation and subject to the MACT standards. Four of the eight facilities are strictly asphalt processing facilities and the other four operate an asphalt roofing manufacturing facility collocated with an asphalt processing facility.

As promulgated in 2003 and amended on May 17, 2005 (70 FR 28360), the NESHAP prescribes MACT standards for asphalt processing and asphalt roofing manufacturing facilities that are major sources of HAP. The MACT standards establish emission limits for PM and total hydrocarbons (THC) as surrogates for total organic HAP. The MACT standards also limit the opacity and visible emissions from certain emission sources. The source categories and the MACT standards are further described in the proposed rule. See 84 FR 18926, 18929 (May 2, 2019).

C. What changes did we propose for the Asphalt Processing and Asphalt Roofing Manufacturing source categories in our May 2, 2019, RTR proposal?

On May 2, 2019, the EPA published a proposed rule in the **Federal Register** for the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP, 40 CFR part 63, subpart LLLLL, that took into consideration the RTR analyses. We proposed to find that the risks from each of the source categories are acceptable and that additional or revised standards are not required in order to provide an ample margin of safety to protect public health and prevent an adverse environmental effect. See 84 FR 18926, 18929 (May 2, 2019). In addition, pursuant to the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories, we proposed to conclude that no revisions to the current standards are necessary for asphalt loading racks, asphalt storage tanks, blowing stills, coating mixers, saturators (including wet loopers), coaters, sealant applicators, and adhesive applicators. The EPA also proposed to conclude that it is not necessary to promulgate a hydrogen chloride (HCl) emissions standard for blowing stills pursuant to the technology review.

We also proposed the following amendments:

- Revisions to the SSM provisions of the NESHAP in order to ensure consistency with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;

- a provision allowing owners and operators to use manufacturers' specifications to establish the maximum pressure drop across the control device used to comply with the PM standards;
- a provision allowing owners and operators to use the performance test average inlet temperature and apply an operating margin of +20 percent to determine maximum inlet gas temperature of a control device used to comply with the PM standards;
- periodic performance testing (*i.e.*, at least once every 5 years), using the same methods currently required for the initial compliance demonstration, of each air pollution control device (APCD) used to comply with the PM, THC, opacity, or visible emission standards, in addition to the current one-time initial performance testing and ongoing operating limit monitoring;
- a requirement for electronic submittal of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports;
- IBR of an alternative test method for EPA Test Method 9; and
- several minor editorial and technical changes in the subpart.

In the same document, although we did not propose any rule amendments based on the residual risk or technology reviews, we requested comment on the relationship between the CAA section 112(d)(6) technology review and the CAA section 112(f) residual risk review; specifically, the extent to which findings that underlie a CAA section 112(f) determination should be considered in making any determinations under CAA section 112(d)(6).

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112(f)(2) and CAA section 112(d)(6) for the Asphalt Processing and Asphalt Roofing Manufacturing source categories. This action also finalizes other changes to the NESHAP, including corrections and clarifications to regulatory provisions related to emissions during periods of SSM; adding electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports; and other technical corrections to improve consistency and clarity. This action also includes a number of other amendments to the NESHAP generally similar to those proposed in the May 2, 2019, RTR proposal, such as amendments related to monitoring procedures and periodic performance testing, but with some modifications

based on consideration of comments received during the public comment period as described in sections III.D and IV.D of this preamble.

A. What are the final rule amendments based on the residual risk review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

This section describes the final actions regarding the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP that the EPA is taking pursuant to CAA section 112(f). The EPA proposed no changes to these NESHAP based on the residual risk reviews conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks due to emissions from the Asphalt Processing and Asphalt Roofing Manufacturing source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

The EPA received two emissions inventory updates for two specific facilities during the public comment period. After considering the updated information, the Agency decided to update certain modeling file records for those two facilities and to reanalyze risk for both source categories, in part because some of the emissions estimates were notably higher than the estimates we used for risk modeling for the proposal and we wanted to confirm that risks were still acceptable. The EPA reanalyzed risk using the same risk assessment methodology used for the proposed rule; however, this did not result in any change to our proposed determination. Based on our analyses (which include the emissions inventory updates received during the public comment period), we find that the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The EPA is, therefore, not revising the standards under CAA section 112(f)(2) (for NESHAP 40 CFR part 63, subpart LLLLL) based on the residual risk review. See sections IV.A.2 and IV.A.3 of this preamble for discussion of key comments and responses regarding the residual risk review, including details about the emissions inventory updates we received during the public comment period.

B. What are the final rule amendments based on the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

The EPA is not finalizing the technology review as proposed

regarding HCl emissions standards for blowing stills. As discussed in section IV.B of this preamble, the EPA determined that it is not appropriate to establish new standards for previously unregulated sources or pollutants as part of the technology review. The Agency is finalizing all required aspects of the technology review as proposed. The EPA has determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for these source categories. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6). Section IV.B.3 of this preamble provides a summary of key comments we received on the technology review and our responses.

C. What are the final rule amendments addressing emissions during periods of SSM?

The Agency is finalizing, as proposed, changes to the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP to eliminate the SSM exemption. Consistent with *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the EPA is establishing standards in this rule that apply at all times. Table 7 to subpart LLLLL of part 63 (General Provisions applicability table) is being revised to change several references related to requirements that apply during periods of SSM. The EPA eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. The EPA determined that facilities in these source categories can meet the applicable emission standards in the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP at all times, including periods of startup and shutdown. Therefore, the EPA determined that no additional standards are needed to address emissions during these periods. Also, as stated in our proposal, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–10 (2016). The legal rationale and detailed changes for SSM periods that are being finalized in this rule are set forth in the proposed rule. See 84 FR 18945 through 18949.

The EPA is also finalizing a revision to the performance testing requirements at 40 CFR 63.8687(b). This final rule text states that each performance test must be conducted under normal operating conditions; and operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The final rules also require that operators maintain records to document that operating conditions during the test represent normal operations. Section IV.C.3 of this preamble provides a summary of key comments we received on the SSM provisions and our responses.

D. What other changes have been made to the NESHAP?

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. The revisions are briefly described in this section (refer to section IV.D of this preamble for further details).

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing a requirement that owners and operators of facilities in the Asphalt Processing and Asphalt Roofing Manufacturing source categories submit electronic copies of certain required performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports through the EPA's Central Data Exchange (CDX) website. Performance test and performance evaluation test reports are prepared using the EPA's Electronic Reporting Tool. We also are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility (*i.e.*, a possible outage in the CDX or Compliance and Emissions Data Reporting Interface (CEDRI) or a force majeure event in the time just prior to a report's due date), as well as the process to assert such a claim. In addition, we are finalizing all revisions that we proposed for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 4 of the proposal. See 54 FR 18951 and 18952. We received no public comment on the editorial corrections and clarifications and these changes are being finalized as proposed.

We are also finalizing amendments in the NESHAP for monitoring pressure drop and temperature of APCDs, and for periodic compliance testing, similar to the proposed amendments, but with

some modifications in response to issues raised in comments on the proposed rulemaking. Regarding pressure drop, instead of using manufacturers' specifications or a performance test to establish only a maximum pressure drop across the control device used to comply with the PM standards as proposed, we are finalizing a requirement that requires owners and operators to establish a pressure drop range (*i.e.*, a minimum and a maximum pressure drop) across the PM control device with the option to either use manufacturers' specifications or a performance test to establish the range. The addition of a minimum limitation to the operating range of the PM control device mirrors the approach in the Asphalt Processing and Asphalt Roofing Manufacturing area source NESHAP, 40 CFR part 63, subpart AAAAAAA, and provides an indication of breakthrough or bypass of the control device, as a drop in the differential pressure below that established by the manufacturer's specification would indicate that potentially either the control device has been inadvertently bypassed (leaking around the filter) or tearing or distortion of the filter has occurred. As stated in the proposal, allowing the use of manufacturers' specifications provides flexibility and alleviates the need for a facility to have to retest the PM control device to reestablish new operating limits due to the inability of a source to "dial in" the differential pressure of their control device for a particular performance test as the differential pressure increases over time as a result of particulate deposition. With regard to monitoring temperature, similar to proposal, the Agency is finalizing a requirement that allows owners and operators to use the performance test average inlet temperature and apply an operating margin of +20 percent to determine maximum inlet gas temperature of a control device used to comply with the PM standards; however, in the final rule, the Agency is clarifying the operating margin applies to temperatures expressed in units of degrees Celsius or degrees Fahrenheit. The EPA acknowledges that the use of Celsius will result in a slightly more conservative temperature range (6.4 degrees Fahrenheit less when compared to the corresponding Fahrenheit range), but it is appropriate to provide the flexibility for facilities to use either temperature scale as either scale will ensure the control devices are operating properly. On the other hand, the application of a 20-percent margin to temperature expressed in absolute

temperature (Rankin or Kelvin scales) would result in too large of an operating limit window. Therefore, we are not allowing the use of an absolute temperature scale. Finally, to ensure ongoing compliance with the standards, the EPA is finalizing requirements for periodic performance testing for each APCD used to comply with the PM, THC, opacity, and visible emission standards, in addition to the current one-time initial performance testing and ongoing operating limit monitoring. The EPA is requiring that the performance tests must be conducted at least once every 5 years, as proposed; however, the Agency is adding language to the final rule text to allow facilities to synchronize their periodic performance testing schedule with a previously conducted emission test provided they can demonstrate to the Administrator's satisfaction that the previously-conducted testing meets the requirements of this rule.

E. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on March 12, 2020. The EPA is finalizing three changes that would affect ongoing compliance requirements for this subpart. First, we are changing the requirements for SSM by removing the provisions that provide an exemption from the requirements to meet the standard during SSM periods. Second, we are removing the requirement to develop and implement an SSM plan. Finally, we are adding a requirement that performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports be submitted electronically. From the assessment of the timeframe needed for implementing the entirety of the revised requirements, the EPA proposed a period of 180 days to be the most expeditious compliance period practicable. No opposing comments were received during the public comment period, and the 180-day period is being finalized as proposed. Thus, the compliance date of the final amendments for all affected sources is September 8, 2020.

Also, we are adding requirements to conduct ongoing periodic performance testing every 5 years. The EPA proposed that each existing affected source, and each new and reconstructed affected source that commences construction or reconstruction after November 21, 2001, and on or before March 12, 2020 that uses an APCD to comply with the standards, must conduct the first periodic performance test on or before March 13, 2023 and conduct subsequent

periodic performance tests no later than 60 months thereafter following the previous performance test. The EPA also proposed that owners or operators of each new and reconstructed affected source that commences construction or reconstruction after March 12, 2020 that uses an APCD to comply with the standards, conduct the first periodic performance test no later than 60 months following the initial performance test and conduct subsequent periodic performance tests no later than 60 months thereafter following the previous performance test. If owners or operators used the alternative compliance option specified in 40 CFR 63.8686(b) to comply with the initial performance test, then the EPA proposed that they must conduct the first periodic performance test no later than 60 months following the date they demonstrated to the Administrator that the requirements of 40 CFR 63.8686(b) had been met. These compliance dates are being finalized as proposed; however, based on a comment received during the public comment period, the EPA is including additional language

that allows facilities to synchronize their periodic performance testing schedule with a previously conducted emission test provided they can demonstrate to the Administrator's satisfaction that the previously conducted testing meets the requirements of this rule (refer to section IV.D of this preamble for further details).

IV. What is the rationale for our final decisions and amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document, *Summary of Public Comments and Responses for Risk and Technology Review for Asphalt Processing and Asphalt Roofing*

Manufacturing, which is available in the docket for this rulemaking.

A. Residual Risk Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories

1. What did we propose pursuant to CAA section 112(f) for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the May 2, 2019, proposed rule for 40 CFR part 63, subpart LLLLL (84 FR 18926). The key results of the risk assessment for the proposal are presented in Table 2 of this preamble. More detail may be found in the residual risk technical support document, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2018 Risk and Technology Review Proposed Rule*, which is available in the docket for this rulemaking.

TABLE 2—ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING PROPOSED INHALATION RISK ASSESSMENT RESULTS

Number of facilities ¹	Maximum individual cancer risk (in 1 million) ²	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
	Based on actual emissions level ^{2,3}	Based on actual emissions level ³	Based on actual emissions level ³	Based on actual emissions level ³	Based on actual emissions level
8	<1	0	0.0007	0.1	HQ _{REL} = 4 (formaldehyde).

¹ Number of facilities evaluated in the risk analysis.

² Maximum individual excess lifetime cancer risk due to HAP emissions from the source categories.

³ Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.

The results of the proposed inhalation risk assessment, as shown in Table 2 of this preamble, indicated that the cancer risk to the individual most exposed is below 1-in-1 million from both actual and allowable emissions, the estimated maximum chronic noncancer target organ-specific hazard index (TOSHI) based on both actual and allowable emissions is 0.1, and the maximum acute noncancer hazard quotient (HQ) is 4 driven by formaldehyde based on the acute reference exposure level (REL). At proposal, the total annual cancer incidence (national) from these facilities based on actual emission levels was estimated to be 0.0007 excess cancer cases per year, or one case in every 1,430 years.

The maximum lifetime individual cancer risk posed by the eight facilities, based on whole facility emissions, was

estimated to be 9-in-1 million at proposal, with naphthalene and benzene emissions from facility-wide fugitive emissions and nickel compound emissions from flares from the Petroleum Refinery source category driving the risk. At proposal, the maximum chronic noncancer hazard index (HI) posed by whole facility emissions was estimated to be 0.1 (for the respiratory system) and occurred at two facilities.

At proposal, the Agency identified emissions of HAP known to be persistent and bio-accumulative in the environment (PB-HAP): Cadmium compounds, lead compounds, mercury compounds, and polycyclic organic matter (POM) (of which polycyclic aromatic hydrocarbons is a subset). The multipathway risk screening assessment resulted in a maximum Tier 2 cancer

screening value of 2 for POM. The Tier 2 screening values for all other PB-HAP emitted from the source categories (cadmium compounds, lead compounds, and mercury compounds) were less than 1.

The ecological risk screening assessment indicated all modeled points were below the Tier 1 screening threshold based on actual and allowable emissions of PB-HAP and acid gases emitted by the source categories.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the risks posed by the Asphalt Processing and Asphalt Roofing Manufacturing source categories are acceptable (see section IV.B.1 of the proposal preamble, 84 FR 18939, May 2, 2019).

The EPA then considered whether 40 CFR part 63, subpart LLLLLL, provides an ample margin of safety to protect public health and whether, taking into consideration costs, energy, safety, and other relevant factors, standards are required to prevent an adverse environmental effect. In considering whether standards are required to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. The EPA proposed that additional or revised standards for the Asphalt Processing and Asphalt Roofing Manufacturing source categories are not required to provide an ample margin of safety to protect public health. The Agency also proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. See section IV.B.2 of the proposal preamble, 84 FR 18939, May 2, 2019.

2. How did the residual risk review change for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

As part of the final risk assessment, the EPA reanalyzed risks using

emissions inventory updates that were received for two specific facilities during the public comment period. These updates included revised actual emissions, allowable emissions, and acute emissions for numerous pollutants from three different emission units at one facility (*i.e.*, a blowing still and two asphalt storage tanks) and revised formaldehyde acute emission rates from four asphalt storage tanks at another facility. The revised emissions used to reanalyze risks are available in the docket for this rulemaking.

Our assessment of the effects of these changes resulted in no change to the maximum lifetime cancer risk for the source categories (*i.e.*, the cancer risk to the individual most exposed is below 1-in-1 million from both actual and allowable emissions). Also, the maximum chronic noncancer HI for the source categories remains less than 1. The maximum screening level acute HQ decreased from 4 to less than 1. Table 3 summarizes the inhalation risk assessment results for the final rule. For the reanalyzed multipathway screening level assessment, the maximum Tier 2 PB-HAP screening value decreased from 2 to less than 1, based on revised emissions received during the comment period. Finally, the environmental risk screening level assessment indicated all modeled points were below the Tier 1 screening threshold for all PB-HAP and acid gases emitted by the source

category. As described in other sections of this preamble, the updated HAP emissions estimates that we received in the public comments resulted in increased emissions for some HAP and decreased emissions for other HAP. After incorporating the new emissions data and rerunning the risk model, the estimated acute risk levels decreased because the emissions estimates for the acute risk driver HAP (*i.e.*, acrolein and formaldehyde) were revised to lower estimates based on comments. The updated emissions estimates are provided in updated risk input files (*i.e.*, HEM files) which are available in the docket. In summary, the new information and reanalyzed risks did not cause a change to the proposed determination that risks caused by emissions from these source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Additional details of the reanalyzed risks can be found in the *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this rulemaking.

TABLE 3—ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING FINAL INHALATION RISK ASSESSMENT RESULTS

Number of facilities ¹	Maximum individual cancer risk (in 1 million) ²	Estimated population at increased risk of cancer ≥ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
	Based on actual emissions level ^{2,3}	Based on actual emissions level ³	Based on actual emissions level ³	Based on actual emissions level ³	Based on actual emissions level
8	<1	0	0.0009	0.03	HQ _{REL} = 0.5 (arsenic).

¹ Number of facilities evaluated in the risk analysis.

² Maximum individual excess lifetime cancer risk due to HAP emissions from the source categories.

³ Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.

3. What key comments did we receive on the residual risk review, and what are our responses?

Comment: One commenter said that the EPA’s risk modeling file does not reflect the correct emission records for their facility (CertainTeed Corp, Shakopee MN), which they provided to the EPA in December 2017. The commenter submitted, in Microsoft Excel format, proposed revisions to the EPA’s risk modeling file that mirror the corrections that were submitted to the EPA in December 2017 plus one

additional correction; these revisions include updates to actual, allowable, and acute emissions for three different emission units (*i.e.*, a blowing still and two asphalt storage tanks).

Another commenter explained that they compared “actual allowable” annual emissions of risk-driving HAP (those HAP contributing at least 10 percent of the overall maximum cancer risk and maximum chronic noncancer TOSHI) used in the EPA’s risk modeling file against the most recent facility-provided responses to the CAA section

114 information collection request (ICR). The commenter claimed that there are two facilities (110000768312 and 110000347018) that have revisions to the CAA section 114 survey data that have not yet been incorporated into the assessment of chronic hazards and advocated that these facilities’ revisions be incorporated into the final risk modeling. The commenter also stated that, other than these revisions, their review did not identify any significant errors in the inputs to the EPA’s Human Exposure Model (HEM-3) risk modeling

results. The commenter stated that the EPA overestimated risk for acrolein emissions from a blowing still at Facility 110000768312. The commenter explained that the acrolein maximum hourly emission rate of the blowing still (HEM-3 source ID CESC0001) used in the EPA's risk modeling file should be revised to 0.0146 pounds per hour (0.0639 tpy) in lieu of the value used in the EPA's analysis (*i.e.*, 19.4 tpy). The commenter contended that because this blowing still is the only source of acrolein emissions at this facility, the acute HQ decreases linearly with the emission rate; and the commenter estimated the revised maximum acute HQ to be 0.008. The commenter also noted that with their revisions to the acrolein emission rates, the acute risk driver for the facility becomes formaldehyde, which has a maximum acute HQ of 0.044. The commenter provided an aerial photo of the specific facility and the corresponding acute HQs for acrolein and formaldehyde at HEM-3 polar receptor locations.

A third commenter stated that the EPA must subject CertainTeed's (Facility 110000768312) acrolein emissions to emission limits. The commenter stated that the EPA relied on the acute exposure guideline level (AEGL) value to conclude that an ample margin of safety was already provided, but that all the EPA reports is that the Agency did not "identify any processes, practices, or control technologies" to reduce acrolein emissions. The commenter disagreed with EPA's conclusion that, "acrolein-specific standards . . . are not necessary to provide an ample margin of safety," stating that it is not clear how one follows from the other.

The commenter stated that the EPA is not lost for options under this analysis if control technology and practices fail to provide an ample margin of safety, and that it must go beyond what may suffice for a technology review posture. The commenter argued that the EPA must consider setting emissions limits, rather than performance standards or control requirements, where—as with CertainTeed—a facility's emission levels and performance standards do not provide an ample margin of protection. The commenter alleged that the EPA ignored the fact that its own data show this facility to be the only facility with significant acrolein emissions, and the EPA doesn't bother to ask why this facility is an outlier.²

Response: The Agency first wants to clarify that one of the commenters revised their comment after the public comment period closed, by naming only one facility (110000768312) (and not Facility 110000347018) as having revisions to the CAA section 114 survey data that had not yet been incorporated into risk modeling (see email from the Asphalt Roofing Manufacturers Association (ARMA) to the EPA dated July 8, 2019, which is available in the docket for this action). Second, regarding the corrected emission records that were provided to the EPA in December 2017 for this facility (110000768312), the 2017 cover letter that was submitted to the EPA requested that the EPA correct the emissions in two specific cells pertaining to chromic acid emissions. The Agency corrected those chromic acid emissions as requested and they are reflected in the modeling file that was used for the proposed risk assessment. However, based on the comments received during the public comment period, we also learned that there were several other emissions data cells in the 2017 CAA section 114 ICR that the facility wanted corrected (*i.e.*, changes to actual, allowable, and acute emissions for three different emission units, including a blowing still and two asphalt storage tanks). The EPA reviewed these revised emissions estimates and determined them to be valid. All of the revisions requested by the facility have been incorporated and correct the emissions originally entered in error. Some of these revisions correct overestimated values (by decreasing pollutant-specific emissions), and the remaining revisions correct underestimated values (by increasing pollutant-specific emissions). We assessed whether all of the revised emissions were reasonable by comparing the revised emissions to other similar emissions sources in the source category. We also confirmed that there were no changes to any stack parameters, dimensions of fugitive sources, coordinates, or other inputs not related to emissions. Using those revised emissions, the EPA reassessed risks from asphalt processing and asphalt roofing manufacturing facilities. The revised emissions did not result in any changes to our proposed determination that risks caused by emissions from these source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. The revised maximum acute HQ screening value is 0.5, based on a REL for arsenic compounds. The two HQ screening

values that were greater than 1 in the risk assessment performed for the proposal (a refined, or off-site, HQ of 4 for formaldehyde and 2 for acrolein, both based on a REL) are now both less than 1 (0.3 and 0.08, respectively, and again based on a REL). Therefore, no pollutant exceeded any acute health benchmark (*i.e.*, REL, AEGL, Emergency Response Planning Guidelines (ERPG)) in our screening-level acute assessment. More details on the revised risk assessment is available in the document, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*.

Comment: One commenter submitted a correction to the EPA's risk modeling file for the formaldehyde maximum emission rate of four asphalt storage tanks (*i.e.*, emission unit IDs T014, T015, T016, and T021) at the Owens Corning Medina County Plant, Facility Registry Service ID 110000388919. The commenter provided calculations showing that the formaldehyde maximum emission rate for each of these four storage tanks should be 0.0429 tpy. Similarly, another commenter attested that the EPA overestimated risk for formaldehyde emissions from these four storage tanks (at Facility 110000388919). Based on the facility corrected values, this commenter estimated the revised maximum acute HQ to be 0.2. The commenter provided an aerial photo of the specific facility and the corresponding acute HQs for formaldehyde at HEM-3 polar receptor locations.

Another commenter argued that EPA's evaluation of potential control options for Owen Corning's formaldehyde emissions is flawed. The commenter disagreed with EPA's conclusion that "additional emissions controls" for storage tanks "are not necessary to provide an ample margin of safety." The commenter stated that EPA's dismissal of formaldehyde controls must be revisited without consideration of costs and instead focus on whether these controls are necessary to provide an ample margin of safety to protect public health.

The commenter noted the EPA's acknowledgement of the HQ of 4 but challenged the EPA's conclusion that eliminating this risk is a "small risk reduction." The commenter stated that it is unclear why the EPA thinks cost-per-ton is the proper metric for the EPA's analysis of cost, when small amounts of highly toxic pollutants can present a significant risk. As an example, the commenter referenced the

² Asphalt RRA Attachment_3—Actual allowable emissions Asphalt HEMInput HAPEmis Grp 1of 1 CatLevel 20171212. Docket ID number EPA-HQ-OAR-2017-0662-0015.

EPA's finding that a moderate amount of emissions of formaldehyde from facilities overall contributed to about 48 percent of increased cancer incidence. The commenter stated that the EPA fails to consider the relevant factors—impact on health, public safety, and the risks posed—in favor of a misleadingly high cost-per-ton estimate.

The commenter further argued that the EPA never explains how the current standards manage to both produce an HQ of 4—a threat to the health of the exposed public—while also providing an ample margin of safety for that same public; the EPA merely concludes that it is so. The commenter stated that the EPA cannot validly explain this conclusion because the two are irreconcilable, and that the EPA can only point to cost, which it is not statutorily allowed to consider.

The commenter added that, even as is, it is unclear why the EPA is even estimating the cost of control in its analysis, claiming the EPA should be able to get actual costs from existing facilities' records, or at minimum, an estimate from an actual control supplier rather than attempting to cobble its own together. The commenter argued that relying on estimates just injects more unnecessary uncertainty into the EPA's analysis.

Response: The EPA reviewed the revised emissions estimates for formaldehyde provided during the comment period and determined those emissions were valid. The revised formaldehyde emission rates are based on corrections discovered during a permit review by Owens Corning of four asphalt storage tanks. Previously, the sum of emissions for all individual volatile organic compounds (VOC) for the four asphalt storage tanks exceeded the maximum potential to emit for THC, which is physically impossible and would greatly overestimate risk. Owens Corning revised the formaldehyde emission rates based on the emission factors listed in Jankousky (2003).³ The emission factors in the Jankousky study were subsequently peer-reviewed and published in a scientific research journal (Trumbore *et al.*, 2005).⁴ Using those revised emissions, the EPA reassessed risks from asphalt processing and asphalt roofing manufacturing facilities. The revised emissions did not cause us to change our proposed determination that risks due to

emissions from these source categories are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Based on the reassessment of risk, the maximum acute HQ screening value for the categories is 0.5, based on an REL for arsenic compounds. The HQ screening value of 4 for formaldehyde in the risk assessment performed for the proposal is now less than 1 (0.3). Therefore, no pollutant exceeded any acute health benchmark (*i.e.*, REL, AEGL, ERPG) in our revised screening-level acute assessment. More details on the revised risk assessment is available in the document, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*.

Regarding the comment about it being unclear why the EPA estimated control costs, as described in the proposed rule preamble, published on May 2, 2019 (84 FR 18926), under the risk review, the EPA follows a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination “considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)⁵ of approximately 1 in 10 thousand.” 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health “in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.” *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

As explained in the proposed rule preamble (84 FR 18926), the EPA proposed that risks were acceptable for

Asphalt Processing and Asphalt Roofing Manufacturing. Therefore, the EPA proceeded to the second step (*i.e.*, the ample margin of safety analysis) for these source categories. Consistent with the framework described above, in the RTR proposal, under this second step, the EPA considered all the health information and other factors including costs to determine whether or not any revisions to the standards were warranted under CAA section 112(f)(2). As explained in the proposal preamble and again in this preamble, we did not identify any cost-effective controls or other measures to reduce risks further. Therefore, we proposed that the current standards provide an ample margin of safety and additional or revised standards are not warranted.

Furthermore, as described in other sections of this final rule preamble, after considering the public comments and revising some of our analyses, we continue to conclude that risks are acceptable and that the current NESHAP provides an ample margin of safety.

With regard to the derivation of our cost estimates, we used methodologies published in the EPA Air Pollution Control Cost Manual.⁶ The EPA Air Pollution Control Cost Manual is widely used by the EPA in developing cost estimates for regulatory standards. The cost algorithms are considered sufficient for determining economic impacts and whether controls are cost effective. The manual's cost algorithms were originally developed from vendor information (and in many cases, this involves contact with hundreds of vendors and the assimilation of large amounts of data) and meant to apply to all situations where the control device can be used. The algorithms can also provide site-specific costs by using site-specific inputs, such as flow rate, pollutants being controlled, temperature, etc. Site-specific costs are often difficult to obtain directly from facilities and are frequently considered proprietary by vendors. We maintain that using the EPA Air Pollution Control Cost Manual to estimate costs for regulatory standards is appropriate. Although industry average prices for certain cost components in our analyses have not been updated to one base year; we updated these component costs to 2017 dollars using the Chemical Engineering Plant Cost Index.

Comment: One commenter disagreed with the EPA's use of a “low confidence” Integrated Risk Information System (IRIS) reference concentration

³ Jankousky, Angela Libby. *Proposed Emission Factors for Criteria Pollutants and Hazardous Air Pollutants from Asphalt Roofing Manufacturing*. ARMA. May 12, 2003.

⁴ Trumbore *et al.* *Emission factors for asphalt-related emissions in roofing manufacturing*. October 2005.

⁵ Although defined as “maximum individual risk,” MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

⁶ Available at: <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution>.

(RfC) of 0.02 milligrams per cubic meter (mg/m³) to assess health risk from HCl. Instead, the commenter argued that the 2000 California Environmental Protection Agency (CalEPA) Office of Environmental Health Hazard Assessment (OEHHA) value of 9 micrograms per cubic meter (µg/m³) (0.009 mg/m³) should be used to assess chronic noncancer risk. The commenter explained that the IRIS value was one that IRIS had stated it planned to update when additional data became available, but that update has not occurred, and that, in such circumstances, the EPA's own prioritization policy directs it to use the best available science, which would include the CalEPA OEHHA value.

The commenter stated that, by not using the CalEPA OEHHA value, the EPA underestimates the chronic noncancer risk from HCl. Additionally, the commenter asserted that the EPA did not attempt to evaluate the cancer risk for HCl, and that the EPA has not conducted a "complete evaluation and determination under" the "IRIS program for evidence of human carcinogenic potential." The commenter indicated that the Court has held that the EPA must analyze the carcinogenic potential of HCl in order to "base its findings" of no carcinogenic risk "on substantial evidence," *Sierra Club v. EPA*, 895 F.3d 1, 11 (D.C. Cir. 2018), and that, therefore, underestimating HCl emissions impacts the EPA's findings of chronic noncancer and cancer risk. The commenter argued that ignoring the potential for carcinogenic risk from HCl is arbitrary.

Response: For the CAA section 112(f)(2) risk reviews, we use dose-response information that has been obtained from various sources and prioritized according to (1) conceptual consistency with the EPA risk assessment guidelines and (2) level of peer review received. The prioritization process is aimed at incorporating into our assessments the best available science with respect to dose-response information. The recommendations are based on the following sources: (1) The EPA, (2) Agency for Toxic Substances and Disease Registry (ATSDR), and (3) CalEPA.⁷ In selecting the appropriate chronic noncancer dose-response value for HCl for use in the risk assessment,

⁷ Documentation of this approach is in the EPA report titled *Risk and Technology (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board: Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing*, June 2009. EPA-452/R-09-006. This approach is also documented in the risk assessment technical support document for the RTR NESHAP rulemaking (and included in the rulemaking docket).

in this case, the 1995 EPA IRIS RfC, we followed this prioritization approach, and we reviewed newer values as part of that process. The 1995 EPA IRIS RfC for HCl of 0.02 mg/m³ was based on the following studies: Sellakumar *et al.*, 1985⁸ and Albert *et al.*, 1982.⁹ The ATSDR has not established a chronic noncancer dose-response value for HCl. In 2000, CalEPA established a chronic REL of 9 µg/m³ (9 × 10⁻³ mg/m³)¹⁰ based on Sellakumar *et al.*, 1985. CalEPA did not use newer data than the EPA in establishing its chronic REL for HCl.

In assessments completed prior to 2000, the EPA assigned confidence ratings (low, medium, high) to the dose-response value (*e.g.*, RfC). The ratings assignment was based generally on the extent and robustness of the database (*e.g.*, number and types of different toxicity test studies, quality of the studies, suitability of the test results for use in dose-response assessment). In the process of assessing the toxicity of a substance, if enough data from relevant studies and of acceptable quality do not exist, the EPA IRIS program does not establish a dose-response value. For HCl, the available data were judged adequate for establishment of an RfC.¹¹ In recognition of limitations in the overall database and the principal study, the resultant RfC for HCl was given a confidence rating of low.

The EPA IRIS program has not assigned a carcinogenicity weight of evidence classification to HCl. Little research has been conducted on the carcinogenicity of HCl. (79 FR 75639.) There are limited studies on the carcinogenic potential of HCl in humans. Of these, two occupational studies failed to separate potential exposure of HCl from exposure to other substances shown to have carcinogenic activity and are, therefore, not appropriate to evaluate the carcinogenic potential of HCl (Steenland *et al.*, 1988, Beaumont *et al.*, 1986).^{12 13} Another

⁸ Sellakumar, A.R., C.A. Snyder, J.J. Solomon and R.E. Albert. 1985. *Carcinogenicity for formaldehyde and hydrogen chloride in rats*. *Toxicol. Appl. Pharmacol.* 81: 401–406.

⁹ Albert, R.E., A.R. Sellakumar, S. Laskin, M. Kuschner, N. Nelson and C.A. Snyder. 1982. *Gaseous Formaldehyde and Hydrogen Chloride Induction of Nasal Cancer in Rats*. *J. Natl. Cancer Inst.* 68(4): 597–603.

¹⁰ Technical Support Document for the Derivation of Non-Cancer Reference Exposure Levels: Appendix D.3, pp. 309–312. (<https://oehha.ca.gov/media/downloads/cnrn/appendixd3final.pdf>).

¹¹ U.S. EPA. 1995. IRIS Chemical Assessment Summary for Hydrogen Chloride. https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0396_summary.pdf#nameddest=rfc.

¹² Steenland, K., T. Schnorr, J. Beaumont, W. Halperin, T. Bloom. 1988. *Incidence of laryngeal*

occupational study failed to show evidence of association between exposure to HCl and lung cancer among chemical manufacturing plant employees (Bond *et al.*, 1991).¹⁴ (80 FR 65488.) Consistent with the human data, chronic inhalation studies in animals have reported no carcinogenic responses after chronic exposure to HCl (Albert *et al.*, 1982; Sellakumar *et al.*, 1985).^{15 16} (80 FR 65488.) Hydrogen chloride has not been demonstrated to be genotoxic. The genotoxicity literature consists of two studies showing false positive results potentially associated with low pH in the test system (Morita *et al.*, 1992; Cifone *et al.*, 1987).^{17 18} (80 FR 65488.)

The International Agency for Research on Cancer (IARC) also classifies agents (chemicals and biologics) as to carcinogenicity. The IARC classifies HCl as "not classifiable as to its carcinogenicity to humans."¹⁹ Of the more than 1,000 agents classified by IARC, no agents are classified as "probably not carcinogenic (IARC) to humans."²⁰

The Court decision cited by the commenter, *Sierra Club v. EPA*, 895 F.3d 1 (D.C. Cir. 2018), addressed the basis for setting a health-based emission limit for HCl under section 112(d)(4) of the CAA, and not for making a determination about risk acceptability under section 112(f)(2) of the CAA.

4. What is the rationale for our final approach and final decisions for the residual risk review?

As noted in the proposal, the EPA sets standards under CAA section 112(f)(2)

cancer and exposure to acid mists. *Br. J. of Ind. Med.* 45: 766–776.

¹³ Beaumont, J.J., J. Leveton, K. Knox, T. Bloom, T. McQuiston, M. Young, R. Goldsmith, N.K. Steenland, D. Brown, W.E. Halperin. 1987. *Lung cancer mortality in workers exposed to sulfuric acid mist and other acid mists*. *JNCL* 79: 911–921.

¹⁴ Bond G.G., Flores G.H., Stafford B.A., Olsen G.W. *Lung cancer and hydrogen chloride exposure: results from a nested case-control study of chemical workers*. 1991. *J Occup Med*; 33(9), 958–61.

¹⁵ Albert, R.E., A.R. Sellakumar, S. Laskin, M. Kuschner, N. Nelson and C.A. Snyder. 1982. *Gaseous formaldehyde and hydrogen chloride induction of nasal cancer in rats*. *J. Natl. Cancer Inst.* 68(4): 597–603.

¹⁶ Sellakumar, A.R., C.A. Snyder, J.J. Solomon and R.E. Albert. 1985. *Carcinogenicity for formaldehyde and hydrogen chloride in rats*. *Toxicol. Appl. Pharmacol.* 81: 401–406.

¹⁷ Morita, T., T. Nagaki, I. Fukuda, K. Okumura. 1992. *Clastogenicity of low pH to various cultured mammalian cells*. *Mutat. Res.* 268: 297–305.

¹⁸ Cifone, M.A., B. Myhr, A. Eiche, G. Bolcsfoldi. 1987. *Effect of pH shifts on the mutant frequency at the thymidine kinase locus in mouse lymphoma L5178Y TK⁻ cells*. *Mutat. Res.* 189: 39–46.

¹⁹ IARC Monographs, Volume 54, <https://monographs.iarc.fr/wp-content/uploads/2018/06/mono54.pdf>.

²⁰ IARC Monographs, July 8, 2019 update. <https://monographs.iarc.fr/agents-classified-by-the-iarc/>.

using “a two-step standard-setting approach, with an analytical first step to determine an ‘acceptable risk’ that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual risk (MIR) of “approximately 1-in-10 thousand” (see 54 FR 38045, September 14, 1989). We weigh all health risk measures and factors in the risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties. As described above, in the second step, we also consider other factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.

Since proposal, we reanalyzed risk after incorporating new emissions data that were received for several emission sources at two facilities; however, after revising risk estimates using these new emissions data, determinations regarding risk acceptability, ample margin of safety, and adverse environmental effects have not changed. For the reasons explained in the proposed rule and in section IV.A.2 of this preamble, we determined that the risks from both source categories are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, the EPA is not revising the standards pursuant to CAA section 112(f)(2) based on the residual risk review, and the Agency is readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories

1. What did we propose pursuant to CAA section 112(d)(6) for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

Pursuant to CAA section 112(d)(6), the EPA proposed to conclude that no revisions to the current standards are necessary for asphalt loading racks and asphalt storage tanks in the Asphalt Processing source category and for coaters, saturators, wet loopers, coating mixers, sealant and adhesive applicators, and asphalt storage tanks in the Asphalt Roofing Manufacturing source category. We did not find any developments in practices, processes, and control technologies that could be applied to asphalt loading racks, asphalt

storage tanks, coating mixers, saturators (including wet loopers), coaters, sealant applicators, or adhesive (laminate) applicators and that could be used to reduce emissions from asphalt processing and asphalt roofing manufacturing facilities. The EPA also did not identify any developments in work practices, pollution prevention techniques, or process changes that could achieve emission reductions from these emissions sources.

Also, pursuant to CAA section 112(d)(6), we proposed to conclude that no revisions to the current standards are necessary for blowing stills in the Asphalt Processing source category. We did not identify any developments in practices, processes, or control technologies, nor any developments in work practices, pollution prevention techniques, or process changes to control organic HAP from blowing stills at asphalt processing facilities. However, for owners or operators that use a chlorinated catalyst in the blowing still during asphalt processing, we identified two potential HCl (an inorganic HAP) emission reduction options: (1) Installing a packed bed scrubber at the outlet of the blowing still (or at the outlet of the combustion device controlling organic HAP emissions); and (2) installing a dry sorbent injection and fabric filter at the outlet of the blowing still. In addition, we considered whether it might be feasible for facilities that need to use a catalyst to only use non-chlorinated substitute catalysts. However, we did not identify a viable non-chlorinated catalyst substitute. We also note that the average capital costs for option 1 would be about \$2,480,000 per facility, the average annualized costs would be about \$500,000 per facility, and the average HCl cost would be about \$60,000 per ton. We also determined that the costs for option 2 would be higher than the costs for option 1. Because the estimated risks due to HCl emissions are low and based on the relatively high costs per facility for each of the options, we proposed to conclude that neither of these options is necessary for reducing HCl emissions from blowing stills that use chlorinated catalysts.

In addition, we solicited comment on the relationship between the CAA section 112(d)(6) technology review and the CAA section 112(f) residual risk review. We solicited comment on whether revisions to the NESHAP are “necessary,” as the term is used in CAA section 112(d)(6), in situations where the EPA has determined that CAA section 112(d) standards evaluated pursuant to CAA section 112(f) provide

an ample margin of safety to protect public health and prevent an adverse environmental effect. In other words, we solicited comment on whether it is “necessary” to revise the standards based on developments in technologies, practices, or processes under CAA section 112(d)(6) if remaining risks associated with air emissions from a source category have already been reduced to levels that provide an ample margin of safety under CAA section 112(f). See CAA section 112(d)(6) (“The Administrator shall review and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [CAA section 112] no less often than every 8 years.”).

2. How did the technology review change for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

Although the EPA proposed to conduct a technology review for previously unregulated HCl emissions from blowing stills, we are withdrawing all aspects of the technology review proposal for HCl from blowing stills. Furthermore, we are clarifying that setting initial standards for previously unregulated emission points or pollutants is not part of the technology review that is required under CAA section 112(d)(6) (refer to section IV.B.3 of this preamble) and that it would be contrary to the provisions and structure of CAA section 112 to establish such standards for the first time under CAA section 112(d)(6). In short, under the CAA, while the EPA has the discretion (and authority) to set initial standards for previously unregulated emissions at the same time and in the same rulemaking process that it conducts a technology review under CAA section 112(d)(6), setting such initial standards is not part of the technology review required under CAA section 112(d)(6). We are finalizing all remaining aspects of the technology review as proposed.

3. What key comments did we receive on the technology review, and what are our responses?

Comment: One commenter stated that the EPA has avoided their obligation to “review and revise, as necessary (taking into account developments in practices, processes, and pollution control technologies), emission standards promulgated under this section no less often than every 8 years” (CAA section 112(d)(6)), by refusing to demonstrate that it has completed an effective technology review and has assessed and accounted for developments, which is

unlawful and arbitrary. The commenter said that the EPA did not comply with the CAA section 112(d)(6) requirements in conducting the technology review. The commenter explained that the EPA only reviewed information it already had or technology it already mandated from three sources of information and did not look at state requirements, foreign control methods, different methods or brands of controls to see which was most effective, efficient, or reliable; requirements likely to promote future technological progress; or facility procedures or best practices, such as best practices to mitigate malfunctions. The commenter added that the EPA should have requested information from actual pollution control manufacturers and distributors and provided the information for notice and comment.

Response: We disagree with the commenter that the EPA has failed to meet the CAA legal obligation to complete the technology review for the Asphalt Processing and Asphalt Roofing Manufacturing source categories.

With respect to the information underlying this review, in June 2017, the EPA issued an ICR pursuant to CAA section 114, to collect information from facilities that are currently considered to be part of the Asphalt Processing source category and/or Asphalt Roofing Manufacturing source category. The responses to the CAA section 114 ICR reflect air regulations of national, state, and local jurisdictions. Companies completed the survey for their facilities and submitted responses to the EPA by September 30, 2017. As part of the CAA section 114 ICR, the EPA requested information about process equipment, control technologies, point and fugitive emissions, and other aspects of facility operations. Specifically, with regard to the CAA section 112(d)(6) review, the EPA asked each facility to “. . . provide an operation date and a description of any developments in practices, processes, or control technologies that [the facility] implemented after the date [the facility] demonstrated initial compliance with either Subpart LLLLLL or subpart AAAAAAAA that resulted in an increase or decrease in HAP emissions from the emission unit.” The responses to this question identify requirements likely to promote future technological progress, facility procedures, and best practices. Furthermore, we asked specific questions about APCDs, other methods of control, and compliance methods used by each facility for their blowing stills, asphalt loading racks, asphalt storage tanks, coating mixers, saturators (including wet loopers), coaters, sealant applicators, adhesive (laminated)

applicators, and mineral handling and storage facilities. The EPA reviewed and compared the data received in response to the CAA section 114 ICR to identify developments in practices, processes, and control technologies that have been implemented by asphalt processing and asphalt roofing manufacturing facilities. Based on this analysis, facilities did not report developments in practices, processes, or control technologies. A summary of this analysis is included in *Clean Air Act Section 112(d)(6) Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Final*, which is available in the docket for this action.

We also reviewed the EPA's Reasonable Available Control Technology (RACT), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) Clearinghouse (RBLC),²¹ which is a database that contains information on the best emission control technologies that have been required by state, local, and territorial air pollution control agencies. The search identified three facilities, and none of these facilities have more stringent emission control requirements than the 40 CFR part 63, subpart LLLLLL, MACT standards. In addition, we conducted site visits to two asphalt processing and asphalt roofing manufacturing facilities subject to the NESHAP (and one asphalt roofing manufacturing facility not subject to the NESHAP). These site visits did not reveal any developments in practices, processes, or control technologies. Furthermore, the EPA reviewed the operating permits for all the asphalt processing and asphalt roofing manufacturing facilities that were major sources and subject to the NESHAP. These operating permits incorporate all relevant local, state, or regional emission limitations, as well as Federal limitations. In almost all cases, the EPA did not find local, state, or Regional emission limitation that could be compared to the emission limitations in the current NESHAP (given unit basis and format differences), and, thus, the EPA did not identify limits that were more stringent than the limits in the current NESHAP,²² neither did we find any facility using a control technology that was not considered during

²¹ RACT/BACT/LAER apply to criteria pollutants only. However, data in the RBLC are not limited to sources subject to RACT, BACT, and LAER requirements. Noteworthy prevention and control technology decisions and information may be included in the database even if they are not related to past RACT, BACT, or LAER decisions.

²² In one case, we identified a less stringent state-only VOC control efficiency requirement for an incinerator controlling emissions from blowing stills.

development of the NESHAP and reflected in the current standards.

Finally, the EPA is not aware of any advances in emission control technology that are being used elsewhere and that are applicable to these source categories. We are not aware of any applicable advances in emission control technology that are being used in other countries. We did not receive any comments from any air pollution control manufacturers or from the Institute of Clean Air Companies. No commenters provided any data or information on emissions control techniques beyond those techniques that we already have considered in conducting this technology review. It would not be feasible for the EPA to examine different brands of emission controls to see which was most effective, efficient, or reliable, as suggested by the commenter. That information is not currently available to the EPA, and even if it were, it would be difficult, if not impossible, to correlate that information with emissions performance and develop practical regulatory requirements. Instead, the current MACT floors are based on each type of process equipment used at asphalt processing facilities and on asphalt roofing manufacturing lines. The majority of data used for the MACT floor analysis were obtained from responses to a survey distributed by ARMA in 1995. To identify the best performing sources and amount of emission reduction, the level of control for each piece of process equipment was based on the type of control device installed and the operating characteristics of the control device. After the initial compliance demonstration, facilities using add-on controls must comply with operating limits to ensure the add-on controls continue to be properly operated and maintained and achieve the same level of performance as during the performance test. Facilities experiencing deviations from the emission limits or the operating limits must report these deviations to the EPA, and the Agency will then determine on a case-by-case basis whether the deviation constitutes a violation. Also, because of the diversity of factors that could lead to a malfunction in these source categories, it would not be practical for the EPA to prescribe the actions that must be taken to reduce the frequency of malfunctions or to minimize emissions in the event of a malfunction. However, as part of the required deviation record, owners and operators must specify the cause of each deviation, which could include a malfunction period as a cause (*e.g.*, any

malfunction that leads to a deviation from an emission limit, operating limit, opacity limit, or visible emission limit).

Comment: One commenter asserted that they had submitted a petition for rulemaking to the EPA, urging the EPA to set an emission standard for HCl from blowing stills that use chlorinated catalyst and to follow CAA section 112(d)(2)–(3) requirements in doing so. The commenter cited *Petition of Natural Resources Defense Council & Sierra Club to Administrator Stephen L. Johnson*, at 13 (January 14, 2009). The commenter contended that the EPA has provided no formal response to that petition for this or any source category and instead used CAA section 112(d)(6) rulemakings to add standards for previously unregulated HAP emissions sources on a source category-by-category basis.²³

The commenter claimed that the EPA has failed to satisfy the CAA because it has failed to recognize the need to set emission standards for currently unrestricted HAP—such as HCl—which is “necessary” and required by the CAA. The commenter added that, in this rulemaking, the EPA must review and follow the CAA and existing caselaw to ensure it sets a numerical limit for HCl and every other regulated HAP that satisfies CAA section 112(d)(2)–(3) and (d)(6).

The commenter concluded that the best-performing sources emit no HCl and the EPA should have set the floor based on the best-performing sources. The commenter noted that HCl emissions from blowing stills account for 55 percent of emissions and no facility controls these emissions. The commenter pointed out that 37 out of 91 blowing stills at asphalt manufacturing plants use chloride-based catalysts, which cause HCl emissions. The commenter added that the EPA acknowledged that over 12 percent of blowing stills do not use a catalyst that emits HCl. This commenter objected to the EPA’s decision not to regulate HCl emissions and objected to the bases for the EPA’s decision, which include that: (1) Sources do not use control devices, and (2) chlorinated catalysts cannot be

prohibited because doing so would require all manufacturers to use higher-quality asphalt flux feedstock, and higher-quality feedstock is not consistently available to all sources. The commenter cited the decision in *National Lime Association v. EPA*, 233 F.3d 625, at 634 (D.C. Cir. 2000), stating that the EPA had a clear statutory obligation to set emission standards for each listed HAP. The commenter added that the EPA’s assertions, that changes in non-technology factors were not appropriate or viable, cannot justify a no-control floor. The commenter added that the EPA has a statutory obligation to set emission limits regardless of whether the best-performing sources in a given category are currently using air pollution control technology to limit their emissions. The commenter stated that if it fails to set emission limits for each HAP, the EPA will fail to complete the review and revision rulemaking as CAA section 112(d)(6) requires and will violate the Court’s order in *California Communities Against Toxics v. Pruitt*, 241 F. Supp. 3d 199 (D.D.C. 2017).

The commenter asserted that an HCl standard should have been set based on the performance of scrubbers used for other sources, noting specifically scrubbers reflected in the control options for the Hospital, Medical, and Infectious Waste Incinerators New Source Performance Standards. The commenter added that this is a development in practices, processes, and control technologies and the EPA has no valid basis under CAA section 112(d)(6) for not revising the standards to reflect or take this development into account. The commenter added that because the EPA has identified spray dryer absorbers as an additional type of control for HCl, these controls must be evaluated as “developments” that could strengthen emission reductions of HCl. Furthermore, the commenter contended that there are also developments in monitoring of acid gases—particularly HCl. The commenter noted that the EPA has required monitoring of HCl in multiple national standards in recent years, and the EPA should strengthen monitoring in this rule due to these demonstrated developments.

Another commenter argued that because the EPA identified blowing still technologies that emit no HCl, a standard for HCl emissions from new blowing stills should be established at zero. The commenter stated that while the EPA does “not anticipate any air quality impacts” from these emissions, this does not justify allowing emissions greater than the MACT floor.

Response: CAA section 112(d)(6) requires the EPA to review and revise,

as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section. We do not agree with the commenter’s assertion that the EPA must establish new standards for unregulated emission points or pollutants as part of a technology review of the existing standards. The EPA reads CAA section 112(d)(6) as a limited provision requiring the Agency to, at least every 8 years, review the emission standards already promulgated in the NESHAP and to revise those standards as necessary taking into account developments in practices, processes, and control technologies. Nothing in CAA section 112(d)(6) directs the Agency, as part of or in conjunction with the mandatory 8-year technology review, to develop new emission standards to address HAP or emission points for which standards were not previously promulgated. As shown by the statutory text and the structure of CAA section 112, CAA section 112(d)(6) does not impose upon the Agency any obligation to promulgate emission standards for previously unregulated emissions.

When the EPA establishes standards for previously unregulated emissions, we would not establish those initial standards pursuant to CAA section 112(d)(6) but instead would establish the standards under one of the provisions that govern initial standard setting—CAA sections 112(d)(2) and (3) or, if the prerequisites are met, CAA section 112(d)(4) or CAA section 112(h). Establishing emissions standards under these provisions of the CAA involves a different analytical approach from reviewing emissions standards under CAA section 112(d)(6).

Though the EPA has discretion (and authority) to develop standards under CAA section 112(d)(2) through (4) and CAA section 112(h) for previously unregulated pollutants at the same time as the Agency completes the CAA section 112(d)(6) review, any such action is not part of the CAA section 112(d)(6) review, and there is no obligation to undertake such actions at the same time as the CAA section 112(d)(6) review. For this rulemaking, we do not have sufficient data to establish an emissions standard that reasonably reflects the performance of the best sources pursuant to the requirements of CAA section 112(d)(2) and (3).²⁴ We have data from one

²³ The commenter cited the following rulemakings as examples where EPA has added standards for previously unregulated HAP emissions sources for certain emission points: Primary Lead NESHAP, Final Rule, 76 FR 70834 (November 15, 2011); Petroleum Refineries NESHAP, 74 FR 55670 (October 28, 2009); Generic MACT NESHAP, Final Rule, 79 FR 60898 (October 8, 2014); Polymers & Resins Group IV; Pesticide Active Ingredient Production; Polyether Polyols Prod. NESHAP, Final Rule, 79 FR 17340 (March 27, 2014); Polymers & Resins I NESHAP, Final Rule, 76 FR 22566, 22569 (April 21, 2011); and Oil and Gas NESHAP, 77 FR 49490, 49492, 49530 (August 16, 2012).

²⁴ We also note that, given the currently available information, establishing standards for HCl from blowing stills under CAA section 112(d)(4) or (h) would not be appropriate.

emission test from a single facility and it would take significant time, well beyond the court-ordered deadline for completing this rulemaking, to acquire sufficient additional data and other emissions information and perform the analyses needed to establish an appropriate standard under CAA section 112(d)(2) and (3). Further, given the court-ordered deadline of March 13, 2020, we do not have time to collect the needed data and information. Therefore, it is impracticable for the EPA to establish new standards for previously unregulated emissions as part of this rulemaking.²⁵

Comment: One commenter contended that the EPA must evaluate and require use of the Digital Camera Opacity Technique (DCOT) as a method for assessing and demonstrating compliance with the opacity limits in the emission standards. The commenter noted that the Agency has required use of the DCOT in the Ferromanganese and Silicomanganese Production NESHAP (40 CFR part 63, subpart XXX) and supported its use because it provides a photographic record of each of the opacity readings, allows for third-party evaluation, and provides better documentation of fugitive emissions. The commenter added that the EPA determined the DCOT is a development in monitoring and will improve the facility's, the EPA's, and the state's ability to assure compliance with the standards. The commenter stated that the EPA noted that the DCOT provides reliable, unbiased opacity readings and required this rather than the human eye-based, visual-only smoke assessment protocol of EPA Method 9. The commenter concluded that because DCOT is a "development" within the meaning of CAA section 112(d)(6), the EPA must take it into account and require use of it in this rule. The commenter contended that failing to do so would also be unlawful, arbitrary, and capricious.

Response: We are not finalizing a requirement to use DCOT in place of EPA Method 9 for this rule. The DCOT system, as required in the Ferroalloys rule, uses a handheld American Society for Testing and Materials (ASTM) D7520-16 compliant camera system, which was only available from a single vendor at the time. There are currently

no vendors supplying the portable ASTM D7520-16 compliant systems. The only DCOT systems currently available are customized fixed-location camera systems. We conclude that it is inappropriate to require the fixed location camera systems for this industry due to the relatively high cost associated with emplacing the large number of individual camera units that would be needed, one at each emission point for the intermittent opacity readings, in addition to the difficulty in positioning the fixed location cameras to obtain a suitable background and orientation with the sun and plume throughout the day at existing source locations. Further, the advantage of the DCOT system, as discussed in the preamble of the final Ferroalloys rule, is in having better documentation ". . . in this specific case where fugitive emissions are driving the risk . . ." Fugitive emissions are not the driving risk for the NESHAP for the Asphalt Processing and Asphalt Roofing Manufacturing source categories. Nevertheless, the EPA is not precluding ASTM D7520-16, *Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere*, from being used to comply with the opacity standards in this rule and, as proposed, has included this method with conditions as an acceptable alternative to EPA Method 9.

Comment: One commenter stated the EPA should update its regulations regarding asphalt storage tanks to require controls of all storage tanks. The commenter added that the EPA acknowledged that currently 428 out of 540 asphalt storage tanks are controlled using a packed bed scrubber or a thermal incinerator. The remaining 112 are uncontrolled and vent straight to the atmosphere. The commenter stated that the EPA should explain why it is not necessary to extend these control requirements to the remainder of the storage tanks.

Response: Based on information received in response to the CAA section 114 ICR, we have determined that there are no uncontrolled asphalt storage tanks that are subject to the requirements for Group 2 storage tanks under the 40 CFR part 63, subpart LLLLL, MACT standards. To clarify, it is true that, based on the CAA section 114 ICR, the EPA initially identified 428 asphalt storage tanks that are fixed roof tanks that vent to either a combustion control device or to a PM control device and another 112 asphalt storage tanks that are fixed roof tanks or horizontal tanks that vent to the atmosphere (uncontrolled). However, we also stated in our proposed technology review that

the 112 uncontrolled asphalt storage tanks are either considered Group 2 under the 40 CFR part 63, subpart LLLLL, MACT standards or operate at an area source of HAP. After additional evaluation, we determined that only 11 of the 112 uncontrolled asphalt storage tanks that we identified from our CAA section 114 ICR could potentially be subject to the requirements for Group 2 storage tanks under the 40 CFR part 63, subpart LLLLL, MACT standards (because the other 101 tanks operate at an area source of HAP and are not subject to the 40 CFR part 63, subpart LLLLL, MACT standards). Of the 11 uncontrolled Group 2 asphalt storage tanks, six are reported as shut down, and after further investigation using responses from an industry-wide ICR on petroleum refineries (refer to section II.C of 79 FR 36886 and 36887), we determined that the remaining five are located at one petroleum refinery, have low vapor pressures (e.g., about 3.38E-05 pounds per square inch), and are subject to either 40 CFR part 60, subpart UU, or 40 CFR part 63, subpart Ka, Kb, or Cc (and not 40 CFR part 63, subpart LLLLL). Finally, we want to clarify that Table 1 to 40 CFR part 63, subpart LLLLL, requires that Group 2 tanks be operated such that exhaust gases are limited to 0-percent opacity. Any control device or other method that can meet the 0-percent opacity standard for storage tanks can be used, and it is possible that some facilities may not need a control device to meet the opacity limit.

Comment: One commenter noted that in the Petroleum Refinery Sector final rule at 80 FR 75178, 75193, and 75194 (December 1, 2015), the EPA recognized as a "development" the availability of fenceline monitoring technology and methods and, therefore, required all facilities to implement these tools. The commenter added that the use of fenceline monitoring, such as the passive samplers or absorbent tubes that the EPA required using EPA Methods 325A and 325B, reflects an up-to-date method to evaluate leaks of HAP. The commenter noted that although in the Petroleum Refinery Sector Rule the EPA chose the chemical benzene as the analyte, the tools the EPA required for refineries can monitor for other pollutants as well. The commenter added that since 2015, there have been even further "developments" in fenceline monitoring, and local and state jurisdictions have required implementation of real-time fenceline monitoring, using various types of technology selected by the facility from approved methods and presented for

²⁵ While not related to the technology review, we note that related to the residual risk review, we found the risks associated with the Asphalt Processing and Asphalt Roofing Manufacturing source categories to be acceptable and that the current NESHAP provides an ample margin of safety in the absence of additional CAA section 112(d)(2) and (3) standards for unregulated pollutants. The HCl emissions from blowing stills were included in the residual risk analysis.

public notice and comment. The commenter concluded that the EPA would violate CAA section 112(d)(6) by failing to consider and account for the “developments” in fenceline monitoring, and pollution controls here—particularly where data show significant health risks from emitted pollutants.

Response: We are not finalizing any requirements for fenceline monitoring in the final rule. The passive samplers and adsorbent tubes of EPA Methods 325A and 325B are a method of evaluating potential fugitive and area source emissions of VOC and are not suitable for all HAP. Fenceline monitoring, as discussed in the preamble to the proposed Petroleum Refinery rule (79 FR 36920), may identify significant increases in emissions, but small increases in emissions are unlikely to impact the fenceline concentrations. The four refineries subject to the 40 CFR part 63, subpart LLLLL, MACT standards are also subject to 40 CFR part 63, subpart CC, and currently have fenceline monitoring in place under that rule. The potential for fugitive volatile organic HAP emissions at the remaining four subject facilities not collocated at a refinery is vastly lower as a result of the reduced amount of piping and the reduced storage of volatile organic materials. The EPA disagrees with the commenter that the data show significant health risks from emitted pollutants. As noted in the *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*, the maximum cancer risk from category emissions is less than 1-in-1 million, and the maximum whole facility cancer risk is 9-in-1 million, driven by non-category refinery emissions, at a facility which already has fenceline monitoring due to the Petroleum Refinery rule.

Comment: We received two comments in response to our request for comments on the relationship between the technology review conducted under CAA section 112(d)(6) and the residual risk analysis under CAA section 112(f)(2) and whether it is necessary for the EPA to amend rules based on CAA section 112(d) to reflect the results of the CAA section 112(d)(6) technology review if the results of the residual risk analysis under CAA section 112(f)(2) show that the current rule provides an ample margin of safety to protect public health and prevent an adverse environmental effect. One commenter argued that the EPA must complete the technology review and propose

standards based on the findings of that review, regardless of the results of the residual risk analysis. Another commenter argued technology reviews need not consider whether to reduce emission limits in response to developments in emission control technologies as long as the health-based ample margin of safety determination remains unchanged. For a more thorough summary of these comments, refer to the comment summary and response document, *Summary of Public Comments and Responses for Risk and Technology Review for Asphalt Processing and Asphalt Roofing Manufacturing*, which is available in the docket for this rulemaking.

Response: The EPA is not taking final action on the proposed interpretation that the EPA take into account in the CAA section 112(d)(6) technology review the results of a residual risk analysis under CAA section 112(f)(2). Instead, the EPA is finalizing our determination that no revision to the NESHAP is necessary pursuant to CAA section 112(d)(6) based on our consideration of developments in practices, processes, and control technologies, as explained above. Because we are not relying on the potential interpretation that was discussed in the proposal preamble in our final action, we are not addressing the comments we received regarding the relationship between the technology review conducted under CAA section 112(d)(6) and the residual risk review conducted under CAA section 112(f)(2).

4. What is the rationale for our final approach for the technology review?

The EPA is not finalizing the technology review as proposed with regard to HCl emissions standards for blowing stills. As discussed in section IV.B of this preamble, we determined that it is not appropriate to establish new standards for previously unregulated sources or pollutants under the technology review. Pursuant to CAA section 112(d)(6), we are finalizing all required aspects of the technology review as proposed. For the reasons explained in the proposed rule, we determined that there are no developments in practices, processes, or control technologies that warrant revisions to the standards. We evaluated all of the comments on the EPA’s technology review and we determined no changes to the review are needed. More information concerning our technology review is in the memorandum titled *Clean Air Act Section 112(d)(6) Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Final*,

in the docket for this action, and in the preamble to the proposed rule (84 FR 18939).

C. Amendments Addressing Emissions During Periods of SSM

1. What amendments did we propose to address emissions during periods of SSM?

We proposed removing and revising provisions related to SSM that are not consistent with the requirement that standards apply at all times. More information concerning our proposal on SSM can be found in the proposed rule (84 FR 18939).

2. How did the SSM provisions change since proposal?

Since proposal, the SSM provisions have not changed.

3. What key comments did we receive on the SSM revisions and what are our responses?

Comment: One commenter disagreed with the EPA’s claims that they have discretion to set standards for malfunctions “where feasible.” The commenter contended that the CAA denies the EPA authority to set malfunction-based standards or exemptions; and cited CAA section 112(d), (h), and CAA section 302(k). The commenter also cited a reconsideration petition for the Refinery Sector Rule, where malfunction standards were developed, that the Court held in abeyance.

Response: The EPA disagrees that it lacks the authority to set standards for malfunctions where feasible but notes that the EPA did not propose separate standards for periods of malfunction. The EPA’s approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute. At proposal, we explained our interpretation of CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into the development of CAA section 112 standards, and noted that this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–10 (2016). (84 FR 18946.)

The EPA further explained that “[a]lthough no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible.” (84 FR 18946). We explained that, “[t]he EPA will consider whether circumstances warrant setting work practice standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to

identify the relevant best performing sources and establish a standard for such malfunctions” (84 FR 18946).

The EPA is not finalizing separate standards for periods of malfunction. As explained at proposal, in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source’s failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction). If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the Federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate (84 FR 18946).

Comment: One commenter objected to the incorporation of 40 CFR 63.6(e)(1)(ii) because it removes the requirement for a source to correct a malfunction within a specified time period. The commenter stated that the incorporation of this provision into the rule can result in increased emissions; and it is unlikely that this potential increase in emissions was accounted for in the risk assessment conducted by the EPA. The commenter recommended the provision not be incorporated into the final rule, and instead sources should be required to initiate corrective action as soon as practicable but no later than 72 hours from the start of the malfunction.

Response: The final rule does not incorporate 40 CFR 63.6(e)(1)(i) and (ii) as they are no longer applicable. The EPA is finalizing as proposed 40 CFR 63.8685(b), which incorporates the general duty to minimize emissions at all times. The finalized regulatory language at 40 CFR 63.8685(b) characterizes what the general duty entails during periods of SSM. Since the EPA is eliminating the SSM exemption and the standards are applicable at all times, there is no need to distinguish among normal operations, startup and

shutdown, and malfunction events in describing the general duty.

Comment: One commenter said that because this rulemaking is being conducted on a shorter-than-normal timetable due to judicial deadlines, they did not have sufficient time to adequately study the proposed revisions to SSM requirements and are unable to respond to the EPA’s request for recommendations on possible approaches. The commenter asserted that different emission standards should be adopted to reflect the realities of different operating conditions and reserves the right to propose such standards at a later date. The commenter stated that despite the EPA’s interpretation of the *Sierra Club v. EPA* Court ruling, it is an unsupportable position to require emissions sources undergoing a condition of startup, shutdown or malfunction to comply with an emission standard developed to reflect normal operations. The commenter said that even to the extent that an acceptable work practice standard can be developed for startup and shutdown emissions, the use of “enforcement discretion” during periods of malfunction (when emissions cannot be readily controlled) fails to qualify as an attainable regulatory standard.

The commenter also stated that if the EPA decides to finalize its proposal to eliminate the SSM exemptions, then they support the EPA’s proposed revisions to Table 7 addressing the General Provision requirement to develop an SSM Plan and related provisions. The commenter also agrees with the EPA’s proposed revisions to eliminate requirements that are inappropriate, unnecessary, or redundant consistent with the elimination of SSM provisions.

Response: The final rule text at 40 CFR 63.8685(b) sets forth the general duty to minimize emissions, and states that, “[a]t all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.” The regulatory text further explains that “[t]he general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved.” *Id.*

As explained at proposal and as discussed earlier in this preamble (in response to another comment we received), in the unlikely event that a source fails to comply with the applicable CAA section 112(d)

standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source’s failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction). If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the Federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate. In summary, the EPA’s interpretation of the CAA and, in particular, CAA section 112, is reasonable and encourages practices that will avoid malfunctions.

Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. *U.S. Sugar Corporation v. EPA*, 830 F.3d 579, 606–610 (2016) (84 FR 18946).

4. What is the rationale for our final approach and final decisions to SSM-related Requirements?

We evaluated all of the comments on the EPA’s proposed amendments to the SSM provisions. For the reasons explained in the proposed rule (84 FR 18939), we determined that these amendments remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. Therefore, we are finalizing the amendments to remove and revise provisions related to SSM, as proposed.

D. Technical Amendments to the MACT Standards

1. What other amendments did we propose for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

We proposed to add an option at 40 CFR 63.8689(d) and Table 2 to subpart LLLL of part 63 to allow the use of

manufacturers' specifications to establish the maximum pressure drop across the control device used to comply with the PM standards. We also proposed to add a footnote to Table 2 to subpart LLLLL of part 63, the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP, to allow owners and operators to use the performance test average inlet temperature and apply an operating margin of +20 percent to determine maximum inlet gas temperature of a control device used to comply with the PM standards. Furthermore, we proposed a requirement at 40 CFR 63.8691(e) that periodic performance tests be conducted at least once every 5 years for each APCD used to comply with the PM, THC, opacity, or visible emission standards.

We also proposed that owners and operators submit electronic copies of required performance test reports, performance evaluation reports, compliance reports, and NOCS reports through the EPA's CDX using the CEDRI, and we proposed two broad circumstances in which we may provide an extension to these requirements. We proposed at 40 CFR 63.8693(h) that an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed at 40 CFR 63.8639(i) that an extension may be warranted due to a force majeure event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

Finally, we proposed numerous provisions clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 4 of the proposal. See 54 FR 18951 and 18952.

2. How did the other amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories change since proposal?

Instead of using manufacturers' specifications or a performance test to establish a maximum pressure drop across the control device used to comply with the PM standards as proposed, we are finalizing a requirement that requires owners and operators to establish a pressure drop range (*i.e.*, a minimum and a maximum pressure drop) across the PM control device with the option to either use manufacturers' specifications or a performance test to establish the range. Also, although we are finalizing the proposed requirement that allows

owners and operators to apply an operating margin of +20 percent to the performance test average inlet temperature to determine maximum inlet gas temperature of a control device used to comply with the PM standards, in the final rule, we are clarifying the operating margin applies to temperatures expressed in units of degrees Celsius or degrees Fahrenheit. Furthermore, in the final rule amendments, we have added language to the periodic performance testing requirements to allow facilities to synchronize their periodic performance testing schedule with a previously conducted emission test. Since proposal, the electronic reporting requirements and the technical and editorial corrections in Table 4 of the proposal (see 54 FR 18951 and 18952) have not changed.

3. What key comments did we receive on the other amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories, and what are our responses?

Comment: One commenter argued that the proposed amendment to 40 CFR 63.8689(d) establishing maximum pressure drop as an operating limit for particulate control devices is not a reliable indicator of continued compliance because holes or other defects in the filter bags will result in decreased pressure drop and an increase in emissions.

Response: The EPA agrees that the maximum pressure drop is insufficient in itself to demonstrate ongoing compliance, as malfunctions such as holes, leaks, and even bypass of the control device would not be indicated by an exceedance of the pressure drop maximum. The inclusion of pressure drop minimum, creating an operating range for the pressure drop, provides a more complete indication of filter bank performance. Therefore, to better assure proper operation of the particulate control device, we are requiring in the final rule at item 3 of Table 2 and item 3 of Table 5 that the operating criteria for each particulate control device include both a maximum and minimum pressure drop operating limit as opposed to solely a maximum pressure drop operating limit. The addition of a minimum limitation to the operating range of the PM control device mirrors the approach in the Asphalt Processing and Asphalt Roofing Manufacturing area source NESHAP, 40 CFR part 63, subpart AAAAAA, and provides an indication of breakthrough or bypass of the control device, as a drop in the differential pressure below that established by the manufacturer's

specification would indicate that potentially either the control device has been inadvertently bypassed (leaking around the filter) or possible tearing or distortion of the filter has occurred. As discussed later in this preamble (in response to another comment we received), we are also clarifying in the final rule at item 12 of Table 3 procedures for establishing the maximum and minimum pressure drop operating limits.

Comment: Two commenters argued that the proposed amendment to 40 CFR 63.8689(d) allowing the use of manufacturers' recommendations to establish operating limits for particulate control devices is not a reliable indicator of continued compliance.

One commenter said that control system vendors may incorporate components from various manufacturers in their systems and the manufacturers may be unaware of the configuration. The commenter also said that control systems may also be reconfigured from time to time to reflect changes in the manufacturing process or the raw materials used, and manufacturers are unable to predict these changes. Similarly, another commenter asserted that the revisions change the limit from a demonstrated point to an assumed point of compliance. The commenter stated that manufacturer specifications may show where a control device should operate within compliance but are not sufficient to show whether a device is operating within compliance.

One commenter contended that the change was proposed in response to industry's claim that tests to capture the maximum pressure drop and gas temperature are difficult due to their dependence on ambient temperature and operating life of the filter. The commenter added that the EPA previously acceded to industry requests for pressure limits but concluded that temperature was too important in evaluating emissions, because emissions are temperature dependent. The commenter added that the EPA made the change based on cost and cited the EPA's cost memorandum, which reports that the switch will save industry nearly half a million dollars, primarily by avoiding having to change out its filters as often. The commenter concluded that industry asked the EPA to save it some money by loosening its standards, and the EPA complied.

A commenter said that the EPA neither cites any authority, nor supplies a reasoned explanation to demonstrate how this change satisfies the CAA. The commenter added that the EPA may not change the standards without demonstrating how the revised standard

satisfies CAA section 112(d)(2) through (3) and the EPA has no authority to weaken the existing standard under CAA section 112(d)(6) or otherwise. The commenter concluded that the EPA may not use cost to set or weaken floor standards under CAA section 112(d)(3) or to weaken standards below the “maximum achievable degree of emission reduction” under CAA section 112(d)(2).

A commenter alleged that the EPA failed to provide the emission and health impacts of the revisions or the scientific or engineering basis for the decision. The commenter added that the EPA did not explain how or whether it validated industry claims that actually running tests created difficulties due to scheduling, whether this change risks an increase in malfunctions or emissions, the impact on the effectiveness of filters when not switching them more frequently, and why manufacturer specifications are sufficient to fit facilities that may vary in their ambient conditions, in their equipment, and in their production. The commenter added that by not providing these analyses, the EPA has deprived the public of the opportunity to file meaningful comments on the change, which is a violation of notice-and-comment rulemaking.

Response: The EPA agrees that for some control technologies, manufacturers’ specifications may not be sufficient to determine operating limits; however, manufacturers’ specifications in conjunction with the periodic performance tests are sufficient to demonstrate compliance for the operation of filter banks such as those used in this source category (where the replaceable parts are limited to the filters themselves and the induced draft fan). Specifically, the EPA disagrees that the use of manufacturers’ specifications for the maximum pressure drop is not a reliable indicator of filter bank performance at the upper end of filter bank pressure drop. The EPA further disagrees that the use of manufacturers’ specifications in setting the maximum pressure drop is a loosening of the standard. The efficiency of a filter bank increases as the pressure drop increases through use because the deposition of material on the filter forms a layer of dust that decreases the effective pore size and increases capture efficiency. The purpose of a maximum pressure drop as a regulatory limit in the case of a filter bank is to prevent overloading of the filter, which may eventually cause breakthrough or result in structural damage to the filter or a possible bypass of the control device. The use of manufacturers’ specifications as an

option for setting the operating range allows for a facility to remain in compliance with the operating limits when the filter is replaced, because that is the moment at which the pressure drop of a properly functioning filter bank is the lowest. As stated in our proposal, allowing use of manufacturers’ specifications to establish operating limits provides flexibility and alleviates the need for a facility to have to retest the PM control device to reestablish new operating limits due to the inability of a source to “dial in” the differential pressure of their control device for a particular performance test as the differential pressure increases over time as a result of particulate deposition. Finally, as discussed previously in this preamble (in response to another comment), we are requiring in the final rule at item 3 of Table 2 and item 3 of Table 5 that the operating criteria for each particulate control device include both a maximum and minimum pressure drop as opposed to solely a maximum pressure drop operating limit. Therefore, in consideration of this comment and in order to provide additional flexibility, we are clarifying in the final rule at 40 CFR 63.8689(d) that facilities may either use the manufacturers’ specifications or a performance test to set each operating limit. For example, facilities may choose to establish the minimum pressure drop operating limit using the manufacturer’s specifications and choose to establish the maximum pressure drop operating limit using a performance test. In this example, the facility could use the performance test to demonstrate that it can still meet the emission limit beyond the maximum pressure drop recommended by the manufacturer’s specifications.

Comment: One commenter supported allowing facilities a 20-percent margin of compliance on the average inlet temperature of a PM control device other than a thermal oxidizer. The commenter stated that it is typically necessary to schedule tests at least 1 to 2 months in advance to assure the availability of stack testing contractors. The commenter also agreed with the EPA that it is impractical to schedule testing at times of the year when maximum temperatures will occur because ambient temperatures cannot be precisely predicted in advance. The commenter stated that they appreciate that the EPA recognizes the variations in operating conditions that facilities may routinely experience consistent with the proper operation of such control devices within the manufacturer’s specifications. However, the commenter

suggested that the EPA clarify this 20-percent allowance applies to temperatures expressed in units of degrees Fahrenheit because the application of a 20-percent margin to temperature expressed in other units of measure would not result in the same temperature.

On the contrary, two other commenters opposed allowing facilities a 20-percent margin of compliance on the average inlet temperature of a PM control device other than a thermal oxidizer.

One commenter disagreed with the EPA’s claims that the change addresses the high impact of ambient conditions on the inlet temperature and removes some of the scheduling uncertainty while still accounting for the temperature dependence of emissions. The commenter contended that the difficulty industry faces is in trying to capture the maximum gas inlet temperature at which they can achieve compliance, which is the maximum point at which that facility can show it can operate while being in compliance. The commenter contended that the 20-percent extra allowance for temperature is a malfunction buffer and the EPA is statutorily barred from creating a malfunction exemption, and they cited *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008) (citing CAA sections 112 and 302(k)).

Additionally, the commenter contended that the EPA did not include an analysis that explains why it chose to add the 20-percent margin for temperature limits, the impact that this will have, and why this change to its prior standards is justified by the best available science. The commenter asserted that the EPA needs to also cite its authority for the proposed change, demonstrate how its proposal stays within the bounds of that authority, and explain and show its work, so that the public can evaluate and comment on it. Similarly, another commenter said the 20-percent extra allowance for temperature is unsupported by any data.

A commenter stated that where condensable PM, including high boiling point asphalt components, is present, control efficiency is affected by the vapor pressure of the components, and emissions will increase at higher temperatures. The commenter suggested that facilities that are unable to maintain the operating limits established during a successful performance test conducted in the winter should be required to conduct an additional performance test in the summer to establish a seasonal operating limit. Further, the commenter said that there is no rationale to allow a 20-percent margin for facilities that

have conducted their performance tests in the summer. Additionally, the commenter pointed out that it is unclear whether the risk assessment included these potentially increased emissions (of condensable PM due to higher control device operating temperatures) and called attention to the statement in the preamble (84 FR 18952) that no air quality impacts are anticipated. The commenter said this statement in the preamble incorrectly ignores the increased emissions due to higher control device operating temperatures that would be allowed in the proposed amendments.

Response: The EPA disagrees with the commenter's assessment that the proposed 20-percent extra allowance on the inlet gas temperature limit of the PM control device is a malfunction buffer. Malfunction is defined in 40 CFR 63.2 as "any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded." The potential temperature exceedance being addressed by this provision is not a failure to operate in a normal or usual manner, but a normal variation of inlet temperature in accordance with natural temperature variation. The temperature at the inlet to these PM control devices is highly dependent on the "sweep" air from the process area, a non-temperature controlled environment. The inlet temperature, thus, swings over the course of a day and through the seasons based upon the ambient temperature. Facilities are not equipped to modulate the inlet temperature. The issue facilities face is not one of testing in the winter and, thus, being out of compliance in the summer, as there is no lower temperature limit being set and facilities are not testing in the winter, but of trying to accurately predict the hottest day of the next 5 summer weeks in advance to be sure that the temperature at the inlet is at its peak during the test event. An 85 degrees Fahrenheit day instead of an anticipated 95 degrees Fahrenheit day is sufficient to cause potential issues in the setting of maximum temperature limitations, as facilities do not have a mechanism for controlling the inlet temperature. The EPA has used operating margins in the setting of control device operating parameter limits for certain other rules such as 40 CFR part 63, subparts AA and BB, NESHAP for Phosphoric Acid

Manufacturing Plants and Phosphate Fertilizers Production Plants, respectively, where the daily average differential pressure across an absorber and the flow rate of the liquid to each absorber or the secondary voltage for a wet electrostatic precipitator is ± 20 percent of the baseline average; 40 CFR part 63, subpart LLL, NESHAP for the Portland Cement Manufacturing Industry, where the temperature of the inline kiln/raw mill during startup/shutdown may exceed the temperature limit by 10 percent; and 40 CFR part 63, subpart RRR, NESHAP for Secondary Aluminum Production, where the flow rate of the capture/collection system indicators is maintained at greater than 90 percent of the flow rate measured during the performance test.

The EPA anticipates no increases in emissions as a result of the change in the mechanism of determining the maximum allowable inlet temperature. As discussed above, facilities have no control over the inlet temperature; the temperature of the sweep air to a large extent defines the inlet temperature. Facilities will not be increasing the inlet operating temperature as a result of this change but will be better able to schedule their periodic performance test as a result. Facilities will likely continue to aim to perform their performance tests at the highest temperature possible in order to best insulate themselves from potentially exceeding their maximum temperature limit as a result of higher ambient temperatures. The inclusion of the periodic performance test will also help ensure that emissions are maintained below the emission limit through the recurring measurement of actual emissions.

The EPA agrees that a clarification of which temperature scale the temperature is to be determined is necessary because the application of a 20-percent margin to temperature expressed in units other than degrees Celsius or degrees Fahrenheit would result in too large of an operating limit window (e.g., although 305 Kelvin is equal to about 90 degrees Fahrenheit, 20 percent of 305 Kelvin is very different from 20 percent of 90 degrees Fahrenheit). Therefore, the EPA is specifying in the final rule at item 12 of Table 3 that the temperature must be measured in units of degrees Celsius or degrees Fahrenheit. We acknowledge that the use of Celsius will result in a slightly more conservative temperature range (6.4 degrees Fahrenheit less when compared to the corresponding Fahrenheit range), but want to ensure the flexibility of either temperature scale for facilities.

Comment: One commenter pointed out that Table 3 to the proposed rule does not specify a required frequency for the EPA Method 22 visible emissions test. The commenter suggested EPA Method 22 should be conducted daily because it serves to ensure continued satisfactory performance of the emissions capture system. The commenter said that defects in the capture system and duct work leading to a control device should not be allowed to persist for 5 years before initiating corrective action.

Response: The EPA disagrees with the commenter that the frequency for EPA Method 22 evaluations is not specified in the rule. Table 3 to 40 CFR part 63, subpart LLLLL, presents the Requirements for Performance Tests; the frequency of these tests, after the initial Performance Test, is set in 40 CFR 63.8691(e). The EPA is clarifying that the visible emissions and opacity tests are included in the periodic performance tests by removing the phrase "during the initial compliance period described in 63.8686" from the appropriate rows in Table 4 to 40 CFR part 63, subpart LLLLL (Initial and Continuous Compliance With Emissions Limitations), dealing with opacity and visible emissions measurements. The inclusion of the EPA Method 22 visible emissions measurement during the performance test documents that, during the performance test, the emissions capture system was operating correctly and that emissions directed to the control device are maximized. The addition of a daily EPA Method 22 evaluation is not necessary. The requirement to limit visible emissions from the capture system is applicable at all times, and the continuing operation of the emissions capture system outside of the performance test is governed by the general duty to operate and maintain any affected source including the air pollution control equipment in a manner consistent with safety and good air pollution control practices.

Comment: One commenter supported the EPA's proposal to require performance testing within 3 years of publication and every 5 years thereafter, to ensure compliance. Another commenter said the requirement to perform testing once every 5 years is redundant with existing requirements. The commenter contended that facilities subject to the current NESHAP are subject to title V permitting, and many title V permits now require re-testing once every 5 years consistent with the title V renewal cycle.

Response: The EPA is finalizing the requirement that the performance tests must be conducted at least once every

5 years, as proposed; however, we are adding language to the final rule text at 40 CFR 63.8691(e)(1) to clarify that facilities are allowed to synchronize their periodic performance testing schedule with a previously conducted emission test, such as a test associated with title V permit renewal, provided the facility can demonstrate to the Administrator's satisfaction that the testing meets the requirements of 40 CFR 63.8686(b).

Comment: One commenter suggested that if the EPA will not reconsider the regulation requiring periodic testing every 5 years, then the EPA should propose an approach that allows testing to be curtailed after a facility demonstrates repeated compliance in successive testing events.

Response: The EPA is not revising the proposed rule to incorporate a reduction in testing frequency greater than 5 years. The EPA has, in some other rules, included a provision that allows for a reduction in the frequency of testing from annual to a 3 or 5-year period after multiple demonstrations of compliance. The 5-year interval for testing in this rule between performance tests would require at least 15 years to demonstrate a trend. Due to the timeframe of recurrent testing (once every 5 years) being promulgated in this rule, the EPA concludes that allowance for a reduced testing frequency is not warranted.

Comment: One commenter declared that the requirement for periodic testing is overly broad and fails to acknowledge both the costs incurred (direct and indirect) and whether additional testing would result in any environmental benefit. The commenter said the proposed rule would require performance testing of each control device used to comply with NESHAP standards for PM, THC, opacity, or visible emissions but argued that NESHAP regulations typically require testing only for the control devices on larger sources, not all control devices. The commenter recommended that for smaller control devices, opacity controls (e.g., mist eliminators), and flares, it should be adequate to operate and maintain each control device as recommended by the manufacturer. The commenter pointed out that petroleum refineries are not required to do any periodic testing for flares subject to the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC). The commenter said that by focusing on only the largest emission sources, there is a clear environmental benefit from the testing, much less disruption to operations, and much less cost incurred by the operator. To the extent the EPA requires some periodic testing, the commenter

recommended that the testing requirement exclude opacity and visible emission control devices, the testing requirement exclude flares, and the periodic testing should focus only on the largest emitting source, where risk is determined to be higher or above some specified threshold.

Response: The EPA is finalizing the testing requirements as proposed. The EPA disagrees with the commenter's assertion that the NESHAP regulations typically require testing only for larger emissions sources. The periodic performance test on all sources (small and large) provides a demonstration that the control devices associated with these sources are continuing to operate as designed. The operation of mist eliminators is not merely to control opacity, but also to control emissions of the PM and organic compounds which cause the opacity. The visible emissions tests of the emissions capture system are integral to determining if the overall capture and control system are operating as designed. The commenter indicates that the Petroleum Refineries NESHAP (40 CFR part 63, subpart CC) does not have periodic testing for flares; however, the Petroleum Refineries NESHAP includes robust continuous monitoring requirements associated with flares that are not present in the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP (40 CFR part 63, subpart LLLLL).

Comment: One commenter argued that the net cost benefit that the EPA presents in its justification for added performance testing requirements is significantly overstated and may become a net burden. The commenter suggested the EPA develop more accurate estimates of testing costs to provide a more realistic estimate of the cost impact for the subject facilities. The commenter stated the EPA's cost estimate for performance testing assumes that each source to be tested has an existing emissions point that can actually be sampled, but this may not always be the case, and the costs of adding a stack, sampling ports, and/or sample platforms and ladders should be included. Additionally, the commenter said the EPA's performance test cost estimates for thermal oxidizers treating vent gas from blowing stills are too low. The commenter argued that the EPA underestimated the number of thermal oxidizer/blowing still tests required, and a test on a thermal oxidizer treating vent gas from one or more blowing stills typically requires testing over 3 separate workdays because only one test run can be completed in a typical workday. The commenter stated that blowing stills operate using a batch process that takes

up to 6 hours, and to assure the test measurements are representative of the batch cycle, testing is performed for the duration of a batch. The commenter said the cost for testing one thermal oxidizer associated with one or more blowing stills, with each test run covering an entire batch cycle of up to 6 hours, is \$44,000. Using this value, the commenter estimated total testing costs to be \$172,600 from an asphalt roofing facility that has five reactors controlled by two different thermal oxidizers which discharge to separate stacks. The commenter applied the increased blowing still/thermal oxidizer costs to the number of tests required for the four facilities that do not already have 5-year testing requirements under their respective state title V programs, and showed that the nationwide cost impact is \$309,100 rather than the EPA's estimate of \$138,800. The commenter said their cost estimate was more than double the estimate the EPA provided in Appendix A of the Cost Impacts memorandum. The commenter said their cost estimate is greater than the EPA's estimated cost savings of \$221,100 from proposed changes in monitoring requirements, resulting in a net cost burden rather than net cost benefit.

Response: The EPA agrees that further review of the costs is warranted and based on this review, we have revised our proposed cost impacts analysis. All sources required to be tested have existing initial performance testing requirements and so have already been tested at least once. Therefore, the additional costs for adding a stack, sampling ports, and/or sample platforms and ladders have not been added to the burden of this rule because we have assumed these items already exist (due to the existing initial performance testing requirements). However, the EPA agrees that, based on the longer run time duration for the blowing stills, the initial cost estimates for these tests was low. Therefore, we revised our cost impacts analysis to reflect the commenter's recommended higher blowing still/thermal oxidizer testing costs (i.e., \$44,000). We also revised the number of thermal oxidizer/blowing still tests required for one facility. Our revised analysis (even after considering the information provided by this commenter) still results in a net cost savings rather than a net cost burden as suggested by the commenter. We estimate that the final amendments will result in a nationwide net cost savings of \$132,000 (2017\$) over the 5-year period following promulgation of the amendments. For further information on

the costs and cost savings associated with the final amendments, see the memoranda, *Cost Impacts of Asphalt Processing and Asphalt Roofing Manufacturing Risk and Technology Review Final* and *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which are available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the other amendments for the Asphalt Processing and Asphalt Roofing Manufacturing source categories?

We evaluated all of the comments on the EPA's proposed amendments for this subpart including the proposed technical and editorial corrections. For the reasons explained in the proposed rule (84 FR 18939), and in sections III.D and IV.D.3 of this preamble, we are finalizing these amendments.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There are four asphalt processing facilities, plus another four asphalt processing facilities collocated with asphalt roofing manufacturing facilities, currently operating as major sources of HAP. As such, eight facilities are subject to the final amendments. A complete list of facilities that are currently subject to the MACT standards is available in Appendix A of the memorandum titled *Clean Air Act Section 112(d)(6) Review for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Final*, in Docket ID No. EPA-HQ-OAR-2017-0662.

B. What are the air quality impacts?

Because we are not establishing new numerical emission limits and are not requiring additional controls, no air quality impacts are expected as a result of the final amendments to the rule. Requiring periodic performance testing has the potential to reduce excess emissions from sources using poorly performing add-on controls, even though facilities are required to be in compliance at all times.

The final amendments will have no effect on the energy needs of the affected facilities in either source category and would, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We revised our proposed cost impacts analysis based on a comment received during the public comment period (see section IV.D.3 of this preamble). We

estimate that the final amendments will result in a nationwide net present value of net cost savings of \$132,000 (2017\$) over the 5-year period following promulgation of amendments (2019–2023). The equivalent annualized value of these net cost savings is \$32,000 per year when costs are discounted at a 7-percent discount rate. Because periodic performance testing would be required every 5 years, we estimated and summarized the cost savings over a 5-year period. The costs associated with the final amendments are related to recordkeeping and reporting labor costs and periodic performance testing. The requirement for periodic testing of once every 5 years results in an estimated increase in the present value of costs of about \$252,000 over the 5-year period in addition to an estimated present value of costs of about \$4,000 for reviewing the final amendments. However, the changes to the monitoring requirements for PM control devices result in an estimated present value of cost savings of about \$388,000 over the 5-year period. Therefore, overall, we estimate the net present value of net cost savings of about \$132,000 for the 5-year period. The final amendments to the monitoring requirements are projected to alleviate some need for asphalt roofing manufacturing facilities to have to retest the PM control device for the sole purpose of reestablishing new temperature and pressure drop operating limits and to allow facilities to extend filter replacement by 3 months. For further information on the costs and cost savings associated with the final amendments, see the memoranda, *Cost Impacts of Asphalt Processing and Asphalt Roofing Manufacturing Risk and Technology Review Final* and *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which are available in the docket for this action.

D. What are the economic impacts?

As noted earlier, we estimated a nationwide cost savings associated with the final requirements over the 5-year period following promulgation of these amendments. This cost savings is not expected to have adverse economic impacts. For further information on the economic impacts associated with the final requirements, see the memorandum, *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which is available in the docket for this action.

E. What are the benefits?

The EPA is not finalizing changes to emissions limits, and we estimate the final changes (*i.e.*, changes to SSM, monitoring, recordkeeping, reporting) are not economically significant. Because these final amendments are not considered economically significant, as defined by Executive Order 12866, and because no emissions reductions were estimated, we did not estimate any benefits from reducing emissions.

F. What analysis of environmental justice did we conduct?

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.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Asphalt Processing and Asphalt Roofing Manufacturing source categories across different demographic groups within the populations living near facilities.

Results of the demographic analysis indicate that, for six of the 11 demographic groups, African American, Native American, other and multiracial, ages 0–17, ages 18–64, and below the poverty level, the percentage of the population living within 5 km of facilities in the source categories is greater than the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from asphalt processing and asphalt roofing manufacturing facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Asphalt Processing and Asphalt Roofing Manufacturing Source*

Categories Operations, available in the docket for this action.

G. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA concludes, based on the results of the risk assessment, that the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Asphalt Processing and Asphalt Roofing Manufacturing Source Categories in Support of the 2019 Risk and Technology Review Final Rule*, available in the docket for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the potential costs and benefits associated with this action. See document titled *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, which is available in the docket for this action.

C. Paperwork Reduction Act (PRA)

Information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2598.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is not revising the numerical emission limitation requirements for this subpart. The EPA is finalizing a requirement to conduct control device performance testing no less frequently than once every 5 years. The EPA has also revised the SSM provisions of the rule and is requiring the use of electronic data reporting for future performance test results and reports, performance evaluation reports, compliance reports, and NOCS reports. This information would be collected to assure compliance with 40 CFR part 63, subpart LLLLLL.

Respondents/affected entities:

Owners or operators of asphalt processing facilities and asphalt roofing manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart LLLLLL).

Estimated number of respondents: Eight (total).

Frequency of response: Initial, semiannual, and annual.

Total estimated burden: 69 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$95,900 (per year), which includes \$88,400 annualized capital and operation and maintenance costs.

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

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities affected in this regulated industry. See the document, *Economic Impact Analysis for Asphalt Processing and Asphalt Roofing Manufacturing NESHAP RTR Final*, available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action 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.

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

This action does not have tribal implications as specified in Executive Order 13175. None of the eight asphalt processing and asphalt roofing manufacturing facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA concludes, based on the results of the risk assessment, that the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. This action's health and risk assessments are contained in section IV.A of this preamble.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. As discussed in the preamble of the proposal, the EPA conducted searches for the Asphalt Processing and Asphalt Roofing Manufacturing NESHAP through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute. We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 3A, 5A, 9, 10, 22, and 25A of 40 CFR part 60, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's

reference method, the EPA reviewed it as a potential equivalent method.

The EPA incorporates by reference ASTM D7520–16, “Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere,” with conditions as an acceptable alternative to EPA Method 9. We note that this version of the method (*i.e.*, ASTM D7520–16) is a newer version than what we proposed (*i.e.*, ASTM D7520–2013). The same proposed conditions apply to this newer version; therefore, we are finalizing these conditions, as proposed. The method provides procedures for determining the opacity of a plume, using digital imagery and associated hardware and software. During the DCOT certification procedure outlined in Section 9.2 of ASTM D7520–16, the owner or operator or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand). The owner or operator must also have standard operating procedures in place, including daily or other frequency quality checks, to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16. The owner or operator must follow the recordkeeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEG formatted images used for opacity and certification determination. The owner or operator or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15-percent opacity of any one reading, and the average error must not exceed 7.5-percent opacity. This approval does not provide or imply a certification or validation of any vendor’s hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor. This method is available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See <https://www.astm.org/>.

The EPA decided not to include 11 other VCS; these methods are impractical as alternatives because of the lack of equivalency, documentation, validation date, and other important technical and policy considerations.

The search and review results have been documented and are in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing*, which is available in the docket for this action.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

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

The EPA concludes, based on the results of an analysis of demographic factors, that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Asphalt Processing and Asphalt Roofing Manufacturing Source Categories Operations*, available in the docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 30, 2020.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by revising paragraph (h)(102) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *
(102) ASTM D7520–16, Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere, approved April 1, 2016, IBR approved for § 63.1625(b) and table 3 to subpart LLLLL.

* * * * *

Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

■ 3. Section 63.8681 is amended by revising paragraph (a) and removing and reserving paragraph (f) to read as follows:

§ 63.8681 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an asphalt processing facility or an asphalt roofing manufacturing facility, as defined in § 63.8698, that is a major source as defined in § 63.2, or is located at, or is part of a major source as defined in § 63.2.

* * * * *

■ 4. Section 63.8683 is amended by revising paragraphs (c) introductory text and (d) to read as follows:

§ 63.8683 When must I comply with this subpart?

* * * * *

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a (or part of a) major source as defined in § 63.2, then the following requirements apply:

* * * * *

(d) You must meet the notification requirements in § 63.8692 according to the schedules in §§ 63.8692 and 63.9(a) through (f) and (h). Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

■ 5. Section 63.8684 is amended by revising the section heading to read as follows:

§ 63.8684 What emission limitations and operating limits must I meet?

■ 6. Section 63.8685 is amended by revising paragraphs (a) through (c) to read as follows:

§ 63.8685 What are my general requirements for complying with this subpart?

(a) Before September 9, 2020, you must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction. On and after September 9, 2020, you must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(b) Before September 9, 2020, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). On and after September 9, 2020, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

(c) Before September 9, 2020, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). On and after September 9, 2020, a startup, shutdown, and malfunction plan is not required.

- 7. Section 63.8686 is amended by:
 - a. Revising the section heading;
 - b. Revising paragraphs (a) and (b)(3); and
 - c. Adding paragraph (b)(4).

The revisions and addition read as follows:

§ 63.8686 By what date must I conduct initial performance tests or other initial compliance demonstrations?

(a) For existing affected sources, you must conduct initial performance tests no later than 180 days after the compliance date that is specified for your source in § 63.8683 and according to the provisions in § 63.7(a)(2).

(b) * * *

(3) The control device and process parameter values established during the previously-conducted emission test are used to demonstrate continuous compliance with this subpart; and

(4) The previously-conducted emission test was completed within the last 60 months.

* * * * *

■ 8. Section 63.8687 is amended by revising paragraph (b) and removing and reserving paragraph (c) to read as follows:

§ 63.8687 What performance tests, design evaluations, and other procedures must I use?

* * * * *

(b) Each performance test must be conducted under normal operating conditions and under the conditions specified in Table 3 to this subpart. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. You may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 9. Section 63.8688 is amended by revising paragraphs (f) and (h) to read as follows:

§ 63.8688 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(f) As an option to installing the CPMS specified in paragraph (a) of this section, you may install a continuous emissions monitoring system (CEMS) or a continuous opacity monitoring system (COMS) that meets the applicable requirements in § 63.8 according to Table 7 to this subpart and the applicable performance specifications of 40 CFR part 60, appendix B.

* * * * *

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

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

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with §§ 63.8693 and 63.8694 and the general requirements of § 63.10(e)(1) and (e)(2)(i).

* * * * *

■ 10. Section 63.8689 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 63.8689 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(b) Except as specified in paragraph (d) of this section, you must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8687 and Table 3 to this subpart.

* * * * *

(d) For control devices used to comply with the particulate matter standards in Table 1 to this subpart, you may establish any of the operating limits for pressure drop range (*i.e.*, a minimum and a maximum pressure drop) across the control device using manufacturers' specifications in lieu of complying with paragraph (b) of this section.

■ 11. Section 63.8690 is amended by revising paragraph (b) to read as follows:

§ 63.8690 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(b) Before September 9, 2020, except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating including periods of startup, shutdown, and malfunction when the affected source is operating. On and after September 9, 2020, you must monitor and collect data at all times in accordance with § 63.8685(b), except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

* * * * *

■ 12. Section 63.8691 is amended by:

- a. Revising the section heading;
- b. Revising paragraphs (a), (b), and (d); and
- c. Adding paragraph (e).

The revisions and addition read as follows:

§ 63.8691 How do I conduct periodic performance tests and demonstrate continuous compliance with the emission limitations and operating limits?

(a) You must demonstrate continuous compliance with each operating limit in Table 2 to this subpart that applies to you according to the procedures specified in Table 5 to this subpart, and you must conduct performance tests as specified in paragraph (e) of this section.

(b) Before September 9, 2020, you must report each instance in which you did not meet each operating limit in Table 5 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8693. On and after September 9, 2020, you must report each instance in which you did not meet each operating limit in Table 5 to this subpart that applies to you, except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

* * * * *

(d) Before September 9, 2020, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). On and after September 9, 2020, this paragraph (d) no longer applies.

(e) For each control device used to comply with the PM, THC, opacity, or visible emission standards of this subpart, you must conduct periodic performance tests using the applicable procedures specified in § 63.8687 and Table 4 to this subpart to demonstrate compliance with § 63.8684(a), and to confirm or reestablish the operating limits required by § 63.8684(b). You must conduct periodic performance tests according to the schedule specified in paragraphs (e)(1) through (3) of this section.

(1) Except as specified in paragraph (e)(3) of this section, for each existing

affected source, and for each new and reconstructed affected source that commences construction or reconstruction after November 21, 2001 and on or before March 12, 2020, you must conduct the first periodic performance test on or before March 13, 2023. As an alternative to the first periodic performance test, you may use the results of a previously-conducted emission test to demonstrate compliance with the emission limitations in this subpart, such as tests for renewing your facility's operating permit under 40 CFR part 70 or 40 CFR part 71, if you demonstrate to the Administrator's satisfaction that it meets the requirements of § 63.8686(b)(1) through (4). The subsequent periodic performance tests must be conducted no later than 60 months thereafter following the previous performance test.

(2) Except as specified in paragraph (e)(3) of this section, for each new and reconstructed affected source that commences construction or reconstruction after March 12, 2020, you must conduct the first periodic performance test no later than 60 months following the initial performance test required by § 63.8689. If you used the alternative compliance option specified in § 63.8686(b) to comply with the initial performance test, then you must conduct the first periodic performance test no later than 60 months following the date you demonstrated to the Administrator that the requirements of § 63.8686(b) had been met.

(3) If an affected source is not operating on the dates the periodic performance test is required to be conducted as specified in paragraph (e)(1) or (2) of this section, then you are not required to restart the affected source for the sole purpose of complying with paragraph (e)(1) or (2) of this section. Instead, upon restart of the affected source, you must conduct the first periodic performance test within 60 days of achieving normal operating conditions but no later than 180 days from startup. You must conduct subsequent periodic performance tests no later than 60 months thereafter following the previous performance test.

■ 13. Section 63.8692 is amended by revising paragraphs (a), (e), and (f) to read as follows:

§ 63.8692 What notifications must I submit and when?

(a) You must submit all the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f), and 63.9(b) through (f) and (h) that apply to you by the dates specified in these sections,

except as provided in paragraphs (b) through (f) of this section.

* * * * *

(e) If you are required to conduct a performance test, design evaluation, opacity observation, visible emission observation, or other compliance demonstration as specified in Table 3 or 4 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). On and after September 9, 2020, you must submit all subsequent Notification of Compliance Status reports to EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), then submit a complete report, including information claimed to be CBI, to EPA. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described earlier in this paragraph (e). You may assert a claim of EPA system outage or force majeure for failure to timely comply with the reporting requirement in this paragraph (e) provided you meet the requirements outlined in § 63.8693(h) or (i), as applicable.

(f) If you are using data from a previously-conducted emission test to serve as documentation of conformance with the emission standards and operating limits of this subpart as specified in § 63.8686(b), you must submit the test data in lieu of the initial performance test results with the Notification of Compliance Status required under paragraph (e) of this section.

■ 14. Section 63.8693 is amended by:

- a. Adding paragraph (b)(6);
- b. Revising paragraphs (c)(4) and (5), (d) introductory text, (d)(1) through (4), and (d)(6);
- c. Adding paragraph (d)(13);
- d. Revising paragraph (f); and
- e. Adding paragraphs (g) through (i).

The revisions and additions read as follows:

§ 63.8693 What reports must I submit and when?

* * * * *

(b) * * *

(6) On and after September 9, 2020, you must submit all compliance reports to EPA via the CEDRI, which can be accessed through EPA's CDX (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to EPA. The report must be generated using the appropriate form on the CEDRI website or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described earlier in this paragraph (b)(6). You may assert a claim of EPA system outage or force majeure for failure to timely comply with the reporting requirement in this paragraph (b)(6) provided you meet the requirements outlined in § 63.8693(h) or (i), as applicable.

(c) * * *

(4) Before September 9, 2020, if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i). On and after September 9, 2020, this paragraph (c)(4) no longer applies.

(5) For each reporting period, you must include in the compliance report the total number of deviations that occurred during the reporting period. If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) in § 63.8684 that apply to you, then you must include a statement that there were no deviations from the emission limitations during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and visible emission limit) in § 63.8684, you must include in the compliance report the information in paragraphs (c)(1) through (6) of this section, and the information in paragraphs (d)(1) through (13) of this section.

(1) The start date, start time, and duration of each malfunction.

(2) For each instance that the CPMS, CEMS, or COMS was inoperative, except for zero (low-level) and high-level checks, the start date, start time, and duration that the CPMS, CEMS, or COMS was inoperative; the cause (including unknown cause) for the CPMS, CEMS, or COMS being inoperative; and descriptions of corrective actions taken.

(3) For each instance that the CPMS, CEMS, or COMS was out-of-control as specified in § 63.8(c)(7), the start date, start time, and duration that the CPMS, CEMS, or COMS was out-of-control, including the information in § 63.8(c)(8).

(4) Before September 9, 2020, the start date, start time, and duration of the deviation, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period. On and after September 9, 2020, the start date, start time, and duration of the deviation including a description of the deviation and the actions you took to minimize emissions in accordance with § 63.8685(b). You must also include:

(i) A list of the affected sources or equipment for which the deviation occurred;

(ii) The cause of the deviation (including unknown cause, if applicable); and

(iii) Any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(6) Before September 9, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes. On and after September 9, 2020, a breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(13) On and after September 9, 2020, for each deviation from an emission limitation in § 63.8684, you must include an estimate of the quantity of

each regulated pollutant emitted over any emission limitation in § 63.8684, and a description of the method used to estimate the emissions.

* * * * *

(f) On and after September 9, 2020, within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (f)(1) through (3) of this section.

(1) *Data collected using test methods supported by EPA's Electronic Reporting Tool (ERT) as listed on EPA's ERT website* (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test. Submit the results of the performance test to EPA via the CEDRI, which can be accessed through EPA's CDX (<https://cdx.epa.gov/>). The data must be submitted in a file format generated through the use of EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on EPA's ERT website.

(2) *Data collected using test methods that are not supported by EPA's ERT as listed on EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the ERT generated package or alternative file to EPA via CEDRI.

(3) *CBI.* If you claim some of the information submitted under paragraph (f)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described in paragraph (f)(1) of this section.

(g) On and after September 9, 2020, within 60 days after the date of completing each continuous monitoring system (CMS) performance evaluation (as defined in § 63.2) as specified in your site-specific monitoring plan, you must submit the results of the performance evaluation following the procedures specified in paragraphs (g)(1) through (3) of this section.

(1) *Performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by EPA's ERT as listed on EPA's ERT website at the time of the evaluation.*

Submit the results of the performance evaluation to EPA via CEDRI, which can be accessed through EPA's CDX. The data must be submitted in a file format generated through the use of EPA's ERT. Alternatively, you may submit an electronic file consistent with the XML schema listed on EPA's ERT website.

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by EPA's ERT as listed on EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the ERT generated package or alternative file to EPA via CEDRI.

(3) *CBI.* If you claim some of the information submitted under paragraph (g)(1) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to EPA. The file must be generated through the use of EPA's ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to EPA via EPA's CDX as described in paragraph (g)(1) of this section.

(h) If you are required to electronically submit a report through CEDRI in EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement in this section. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as

possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(i) If you are required to electronically submit a report through CEDRI in EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement in this section. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (i)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 15. Section 63.8694 is amended by revising paragraph (a)(2) and adding paragraph (e) to read as follows:

§ 63.8694 What records must I keep?

(a) * * *

(2) Before September 9, 2020, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. On and after September 9, 2020, this paragraph (a)(2) no longer applies.

* * * * *

(e) Any records required to be maintained by this part that are submitted electronically via EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or EPA as part of an on-site compliance evaluation.

■ 16. Section 63.8697 is amended by revising paragraph (b)(1) to read as follows:

§ 63.8697 Who implements and enforces this subpart?

* * * * *

(b) * * *

(1) Approval of alternatives to the requirements in §§ 63.8681, 63.8682, 63.8683, 63.8684, 63.8685, 63.8686, 63.8687, 63.8688, 63.8689, 63.8690, and 63.8691.

* * * * *

■ 17. Section 63.8698 is amended by revising definitions of "Adhesive applicator," "Deviation," and "Sealant applicator" to read as follows:

§ 63.8698 What definitions apply to this subpart?

* * * * *

Adhesive applicator means the equipment that uses open pan-type application (e.g., a roller partially submerged in an open pan of adhesive) to apply adhesive to roofing shingles for

producing laminated or dimensional roofing shingles.

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an

applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Before September 9, 2020, fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. On and after September 9, 2020, this paragraph (3) no longer applies.

* * * * *

Sealant applicator means the equipment that uses open pan-type application (e.g., a roller partially submerged in an open pan of sealant) to apply a sealant strip to a roofing product. The sealant strip is used to seal overlapping pieces of roofing product after they have been applied.

* * * * *

■ 18. Table 1 to subpart LLLLL of part 63 is amended by revising row 1 and footnote b to read as follows:

TABLE 1 TO SUBPART LLLLL OF PART 63—EMISSION LIMITATIONS

For—	You must meet the following emission limitation—
1. Each blowing still, Group 1 asphalt loading rack, and Group 1 asphalt storage tank at existing, new, and reconstructed asphalt processing facilities; and each Group 1 asphalt storage tank at existing, new, and reconstructed asphalt roofing manufacturing lines; and each coating mixer, saturator (including wet looper), coater, sealant applicator, and adhesive applicator at new and reconstructed asphalt roofing manufacturing lines.	<ul style="list-style-type: none"> a. Reduce total hydrocarbon mass emissions by 95 percent, or to a concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen; b. Route the emissions to a combustion device achieving a combustion efficiency of 99.5 percent; c. Route the emissions to a combustion device that does not use auxiliary fuel achieving a total hydrocarbon (THC) destruction efficiency of 95.8 percent; d. Route the emissions to a boiler or process heater with a design heat input capacity of 44 megawatts (MW) or greater; e. Introduce the emissions into the flame zone of a boiler or process heater; or f. Route emissions to a flare meeting the requirements of § 63.11(b).

^b The opacity limit can be exceeded for one consecutive 15-minute period in any 24-hour period when the storage tank transfer lines are being cleared. During this 15-minute period, the control device must not be bypassed. If the emissions from the asphalt storage tank are ducted to the saturator control device, the combined emissions from the saturator and storage tank must meet the 20 percent opacity limit (specified in 3.a of Table 1 to this subpart) during this 15-minute period. At any other time, the opacity limit applies to Group 2 asphalt storage tanks.

■ 19. Table 2 to subpart LLLLL of part 63 is amended by revising rows 3 and 4 and footnotes a and c to read as follows:

TABLE 2 TO SUBPART LLLLL OF PART 63—OPERATING LIMITS

For—	You must ^a
3. Control devices used to comply with the particulate matter standards..	<ul style="list-style-type: none"> a. Maintain the 3-hour average^b inlet gas temperature at or below the operating limit established during the performance test; and b. Maintain the 3-hour average^b pressure drop across the device^c within the operating range limits (i.e., at or above a minimum pressure drop and at or below a maximum pressure drop) established during the performance test, or as an alternative, established according to the manufacturer's specifications as specified in § 63.8689(d).
4. Other control devices that are neither a combustion device nor a control device used to comply with the particulate matter emission standards.	Maintain the approved monitoring parameters within the operating limits established during the performance test.

^a The operating limits specified in Table 2 to this subpart are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you are using a CEMS or COMS, you must maintain emissions below the value established during the initial performance test.

^b A 15-minute averaging period can be used as an alternative to the 3-hour averaging period for this parameter.

^c As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 to this subpart can monitor the voltage to the ESP. If this option is selected, the ESP voltage must be maintained at or above the operating limit established during the performance test.

■ 20. Table 3 to subpart LLLLL of part 63 is amended by revising rows 1, 7, and 11 through 13 and footnotes a and c and adding footnotes d through f to read as follows:

TABLE 3 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS ^{a b}

For—	You must—	Using—	According to the following requirements—
1. All particulate matter, total hydrocarbon, carbon monoxide, and carbon dioxide emission tests.	a. Select sampling port's location and the number of traverse points.	i. EPA test method 1 or 1A in appendix A to part 60 of this chapter.	A. For demonstrating compliance with the total hydrocarbon percent reduction standard, the sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere. B. For demonstrating compliance with the particulate matter mass emission rate, THC destruction efficiency, THC outlet concentration, or combustion efficiency standards, the sampling sites must be located at the outlet of the control device prior to any releases to the atmosphere.
7. All opacity tests	Conduct opacity observations ..	EPA test method 9 in appendix A to part 60 of this chapter, or ASTM D7520–16 ^{d f} .	Conduct opacity observations for at least 3 hours and obtain 30, 6-minute averages.
11. Each combustion device	Establish a site-specific combustion zone temperature operating limit.	Data from the CPMS and the applicable performance test method(s).	You must collect combustion zone temperature data every 15 minutes during the entire period of the 3-hour performance test, and determine the average combustion zone temperature over the 3-hour performance test by computing the average of all of the 15-minute readings.
12. Each control device used to comply with the particulate matter emission standards.	Establish a site-specific inlet gas temperature operating limit; and if not complying with §63.8689(d), also establish site-specific limits for the pressure drop range (<i>i.e.</i> , a minimum and a maximum pressure drop) across the device ^e .	Data from the CPMS and the applicable performance test method(s).	You must collect the inlet gas temperature and pressure drop ^b data every 15 minutes during the entire period of the 3-hour performance test, and determine the average inlet gas temperature and pressure drop ^c over the 3-hour performance test by computing the average of all of the 15-minute readings. The inlet gas temperature operating limit is set at +20 percent of the test run average inlet gas temperature measured in units of degrees Celsius or degrees Fahrenheit. The maximum (or minimum) pressure drop is set as the maximum (or minimum) average pressure drop of the performance test runs which demonstrated compliance with the applicable emission limit.
13. Each control device that is neither a combustion device nor a control device used to comply with the particulate matter emission standards.	Establish site-specific monitoring parameters.	Process data and data from the CPMS and the applicable performance test method(s).	You must collect monitoring parameter data every 15 minutes during the entire period of the 3-hour performance test, and determine the average monitoring parameter values over the 3-hour performance test by computing the average of all of the 15-minute readings.

^a For initial performance tests, as specified in §63.8686(b), you may request that data from a previously-conducted emission test serve as documentation of conformance with the emission standards and operating limits of this subpart.

^b Performance tests are not required if: (1) The emissions are routed to a boiler or process heater with a design heat input capacity of 44 MW or greater; or (2) the emissions are introduced into the flame zone of a boiler or process heater.

^c As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 to this subpart can monitor the voltage to the ESP.

^d If you use ASTM D7520–16 in lieu of EPA test method 9, then you must comply with the conditions specified in this footnote. During the digital camera opacity technique (DCOT) certification procedure outlined in Section 9.2 of ASTM D7520–16, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand). You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16. You must follow the record keeping procedures outlined in §63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination. You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of any one reading and the average error must not exceed 7.5 percent opacity. This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor.

^e You may conduct two separate performance tests to establish the operating limits for pressure drop range (*i.e.*, one performance test to establish a minimum pressure drop operating limit and one performance test to establish a maximum pressure drop operating limit); however, you may choose to establish either, or both, the minimum and maximum pressure drop operating limits using the requirements of §63.8689(d) in lieu of the requirements specified in this Table.

^f Incorporated by reference, see §63.14.

■ 21. Table 4 to subpart LLLLL of part 63 is amended by revising the table heading, the fourth column heading, and rows 4 and 5 to read as follows:

TABLE 4 TO SUBPART LLLLL OF PART 63—INITIAL AND CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

For—	For the following emission limitation—	You have demonstrated compliance if—
4. Each saturator (including wet looper) and coater at an existing, new, or reconstructed asphalt roofing manufacturing line.	a. Limit visible emissions from the emissions capture system to 20 percent of any period of consecutive valid observations totaling 60 minutes. b. Limit opacity emissions to 20 percent	The visible emissions, measured using EPA test method 22 in appendix A to part 60 of this chapter, for any period of consecutive valid observations totaling 60 minutes do not exceed 20 percent. The opacity, measured using EPA test method 9 in appendix A to part 60 of this chapter, for each of the first 30 6-minute averages does not exceed 20 percent.

TABLE 4 TO SUBPART LLLLL OF PART 63—INITIAL AND CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS—Continued

For—	For the following emission limitation—	You have demonstrated compliance if—
5. Each Group 2 asphalt storage tank at existing, new, and reconstructed asphalt processing facilities and asphalt roofing manufacturing lines.	Limit exhaust gases to 0 percent opacity	The opacity, measured using EPA test method 9 in appendix A to part 60 of this chapter, for each of the first 30 6-minute averages does not exceed 0 percent.
* * * * *	■ 22. Table 5 to subpart LLLLL of part 63 is amended by revising rows 3 and	4 and footnotes a and d to read as follows:

TABLE 5 TO SUBPART LLLLL OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS^a

For—	For the following operating limit—	You must demonstrate continuous compliance by—
* * * * *	* * * * *	* * * * *
3. Control devices used to comply with the particulate matter emission standards.	a. Maintain the 3-hour ^c average inlet gas temperature at or below the operating limit established during the performance test; and. b. Maintain the 3-hour ^c average pressure drop across device ^d within the operating range limits that were established pursuant to § 63.8689(b) and/or (d).	i. Passing the emissions through the control device; and ii. Collecting the inlet gas temperature and pressure drop ^d data according to § 63.8688(b) and (c); and iii. Reducing inlet gas temperature and pressure drop ^d data to 3-hour ^c averages according to calculations in Table 3 to this subpart; and iv. Maintaining the 3-hour ^c average inlet gas temperature within the level established during the performance test; and v. Maintaining the 3-hour ^c average pressure drop across device ^d within the level established pursuant to § 63.8689(b) and/or (d).
4. Other control devices that are neither a combustion device nor a control device used to comply with the particulate matter emission standards.	a. Maintain the monitoring parameters within the operating limits established during the performance test.	i. Passing the emissions through the devices; ii. Collecting the monitoring parameter data according to § 63.8688(d); and iii. Reducing the monitoring parameter data to 3-hour ^c averages according to calculations in Table 3 to this subpart; and iv. Maintaining the monitoring parameters within the level established during the performance test.

^a The operating limits specified in Table 2 to this subpart and the requirements specified in Table 5 to this subpart are applicable if you are monitoring control device operating parameters to demonstrate continuous compliance. If you use a CEMS or COMS to demonstrate compliance with the emission limits, you are not required to record control device operating parameters. However, you must maintain emissions below the value established during the initial performance test. Data from the CEMS and COMS must be reduced as specified in §§ 63.8690 and 63.8(g)(1) through (4).

^c A 15-minute averaging period can be used as an alternative to the 3-hour averaging period for this parameter.

^d As an alternative to monitoring the pressure drop across the control device, owners or operators using an ESP to achieve compliance with the emission limits specified in Table 1 to this subpart can monitor the voltage to the ESP. If this option is selected, the ESP voltage must be maintained at or above the operating limit established during the performance test.

■ 23. Table 6 to subpart LLLLL of part 63 is amended by revising rows 4, 5, and 6 and adding row 7 to read as follows:

TABLE 6 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR REPORTS

You must submit—	The report must contain—	You must submit the report—
* * * * *	* * * * *	* * * * *
4. Notification of compliance status	The information in § 63.9(h)(2) through (5), as applicable.	According to the requirements in §§ 63.8692(e) and 63.9(h)(2) through (5), as applicable.

TABLE 6 TO SUBPART LLLLL OF PART 63—REQUIREMENTS FOR REPORTS—Continued

You must submit—	The report must contain—	You must submit the report—
5. A compliance report	<p>a. A statement that there were no deviations from the emission limitations during the reporting period, if there are no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you.</p> <p>b. If there were no periods during which the CPMS, CEMS, or COMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS, CEMS, or COMS was out-of-control during the reporting period.</p> <p>c. If you have a deviation from any emission limitation (emission limit, operating limit, opacity limit, and visible emission limit), the report must contain the information in § 63.8693(c) and (d).</p> <p>d. Before September 9, 2020, if you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). On and after September 9, 2020, this paragraph no longer applies.</p>	<p>Semiannually according to the requirements in § 63.8693(b).</p>
6. An immediate startup, shutdown, and malfunction report if you have a startup, shutdown, or malfunction during the reporting period before September 9, 2020, and actions taken were not consistent with your startup, shutdown, and malfunction plan. On and after September 9, 2020, this paragraph no longer applies.	The information in § 63.10(d)(5)(ii)	By fax or telephone within 2 working days after starting actions inconsistent with the plan followed by a letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
7. Performance test report	The information in § 63.7	Within 60 days after completion of the performance test according to the requirements in § 63.8693(f).

- 24. Table 7 to subpart LLLLL of part 63 is amended by:
- a. Removing the entry for § 63.6(e)(1) and adding entries in numerical order for §§ 63.6(e)(1)(i), 63.6(e)(1)(ii), and 63.6(e)(1)(iii);
- b. Revising the entries for §§ 63.6(e)(3), 63.6(f)(1), 63.6(h)(1), and 63.7(e)(1);

- c. Adding an entry in numerical order for § 63.7(e)(4);
- d. Removing the entry for § 63.8(c)(1);
- e. Revising the entries for §§ 63.8(c)(1)(i), 63.8(c)(1)(ii), 63.8(c)(1)(iii), and 63.8(d);
- f. Removing the entry for § 63.10(b)(2)(i)-(v);

- g. Adding entries in numerical order for §§ 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv), and 63.10(b)(2)(v); and
- h. Revising the entry for § 63.10(d)(5).
The revisions and additions read as follows:

TABLE 7 TO SUBPART LLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL

Citation	Subject	Brief description	Applies to subpart LLLLL
* § 63.6(e)(1)(i)	* Operation & Maintenance	* Operate to minimize emissions at all times.	* Yes before September 9, 2020. No on and after September 9, 2020. See § 63.8685(b) for general duty requirement.
* § 63.6(e)(1)(ii)	* Operation & Maintenance	* Correct malfunctions as soon as practicable.	* Yes before September 9, 2020. No on and after September 9, 2020.
* § 63.6(e)(1)(iii)	* Operation & Maintenance	* Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	* Yes.

TABLE 7 TO SUBPART LLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL—Continued

Citation	Subject	Brief description	Applies to subpart LLLLL
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan (SSMP).	1. Requirement for SSM and startup, shutdown, malfunction plan. 2. Content of SSMP.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.6(f)(1)	Compliance Except During SSM ..	You must comply with emission standards at all times except during SSM.	Yes before September 9, 2020. No on and after September 9, 2020.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.6(h)(1)	Compliance with Opacity/VE Standards.	You must comply with opacity/VE emission limitations at all times except during SSM.	Yes before September 9, 2020. No on and after September 9, 2020.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	1. Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. 2. Not a violation to exceed standard during SSM.	Yes before September 9, 2020. No on and after September 9, 2020. See § 63.8687.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.7(e)(4)	Conduct of performance tests	Administrator's authority to require testing under section 114 of the Act.	Yes.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.8(c)(1)(i)	Routine and predictable CMS malfunction.	1. Keep parts for routine repairs readily available. 2. Reporting requirements for CMS malfunction when action is described in SSM plan.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.8(c)(1)(ii)	CMS malfunction not in SSP plan	Keep the necessary parts for routine repairs if CMS.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	Develop a written startup, shutdown, and malfunction plan for CMS.	Yes before September 9, 2020. No on and after September 9, 2020.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.8(d)	CMS Quality Control	1. Requirements for CMS quality control, including calibration, etc. 2. Must keep quality control plan on record for the life of the affected source. 3. Keep old versions for 5 years after revisions.	Yes.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.10(b)(2)(i)	Records related to Startup and Shutdown.	Occurrence of each of operation (process equipment).	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.10(b)(2)(ii)	Recordkeeping Relevant to Malfunction Periods and CMS.	Occurrence of each malfunction of air pollution equipment.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Maintenance on air pollution control equipment.	Yes.
§ 63.10(b)(2)(iv)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Actions during startup, shutdown, and malfunction.	Yes before September 9, 2020. No on and after September 9, 2020.
§ 63.10(b)(2)(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Actions during startup, shutdown, and malfunction.	Yes before September 9, 2020. No on and after September 9, 2020.
* * * * *	* * * * *	* * * * *	* * * * *
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes before September 9, 2020. No on and after September 9, 2020.
* * * * *	* * * * *	* * * * *	* * * * *

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