on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–21677 Filed 8–23–96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5558–3]

RIN 2060–AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Proposed Rule Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Amendments.

SUMMARY: On April 22, 1994 and June 6, 1994, the EPA issued the National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. This rule is commonly known as the Hazardous Organic NESHAP or the HON. In June 1994, petitions for review of the April 1994 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 75 technical issues and concerns with drafting clarity of the rule. Today's action proposes correcting amendments to the rule to address the petitioners' issues.

Today's action proposes new definitions that apply to wastewater and wastewater treatment and revised control and compliance provisions for wastewater. A new compliance date of April 22, 1999, is being proposed for process wastewater, heat exchange systems, in-process equipment subject to the provisions of § 63.149, and maintenance wastewater. The proposed changes to these provisions are sufficiently far reaching and complex to render those provisions effectively a new rule. The EPA is also proposing a separate compliance date for wastewater streams affected by the omission of nitrobenzene from the list of compounds subject to the wastewater provisions. The proposed revisions to the other provisions to the rule are corrections and clarifications to ensure the rule is implemented as intended. Today's amendments would also provide some additional compliance options that would reduce the burden associated with the recordkeeping and reporting requirements of the rule.

The proposed amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

DATES: *Comments.* Comments must be received on or before September 25, 1996 unless a hearing is requested by September 5, 1996. If a hearing is requested, written comments must be received by October 10, 1996.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than September 5, 1996. If a hearing is held, it will take place on September 10, 1996, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–19 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, Waste and Chemical Processes Group, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5671.

Docket. Dockets No. A–90–19 through A–90–23, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying. Comments on the proposed changes to the NESHAP may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541–5254 or Mary Tom Kissell, Waste and Chemical Processes Group, at (919) 541–4516. For technical questions on wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499. The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in Table 1 of 40 CFR part 63, subpart F. Styrene-butadiene rubber producers. Polybutadiene rubber producers. Producers of Captafol®; Captan®; Chlorothalonil; Dacthal; and Tordon™ acid. Producers of Hypalon®; Oxybisphenoxarsine/1,3-diisocyanate (OBPA®); Polycarbonates; Polysulfide rubber; Chlorinated paraffins; and Symmetrical tetrachloropyridine. Pharmaceutical producers.

Category	Examples of regulated entities
	Producers of Methylmethacrylate-butadiene-styrene resins (MBS); Butadiene-furfural cotrimer; Methylmethacrylate-acrylonitrile-butadiene-styrene (MABS) resins; and Ethylidene norbornene.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (CA). Processes subject to the negotiated regulation for equipment leaks (i.e., 40 CFR part 63, subpart I) are also potentially affected by this action. Processes subject to 40 CFR part 63, subpart I are producers of any of the products listed in 40 CFR part 63, subpart I that are located at facilities that are major sources as defined by section 112 of the CA. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100 and 40 CFR 63.190. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Copies of Regulatory Text

The proposed regulatory text is not included in this Federal Register action because of the length and complexity of the amendments to the rule. The proposed changes to the rule are discussed fully in this preamble. The proposed amendments to the rule are available in Docket A–90–19 or by request from the Air and Radiation Docket and Information Center (see **ADDRESSES**) or the EPA contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. The proposed rule amendments may also be obtained over the Internet at http://ttnwww.rtpnc.epa.gov or from the EPA's Technology Transfer Network (TTN). The TTN is a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bits per second modem. Select TTN Bulletin Board: Clean Air Act Amendments and select menu item Recently Signed Rules. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

C. Electronic Submission of Comments

Comments on the proposed changes to the NESHAP may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A–90–19. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

D. Background on Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the Federal Register the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 notice, there have been several amendments to clarify various aspects of the rule. Readers should see the following Federal Register notices for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); and June 20, 1996 (61 FR 31435).

In June 1994, the Chemical Manufacturers Association and Dow Chemical Company filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA*, 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA*, 94–1465 (D.C. Cir). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. Today's proposed revisions address all of the issues raised by CMA and Dow on the April 1994 rule.

With today's action, EPA is proposing clarifying and correcting amendments to subparts F, G, H, and I of part 63. Following review and consideration of comments received on today's proposed revisions in accordance with a settlement agreement reached with CMA and Dow, EPA will take final action on the proposed amendments by December 31, 1996. As of the date of signature of this proposal, the section 113(g) notice process was not yet complete, and, therefore, the settlement was not final. However, EPA believes it is important to publish the proposed rule in accordance with the schedule provided in the draft settlement agreement because of the pendency of the compliance date. When a settlement becomes final, it will govern the date of signature of the final rule. As discussed in section III.B, sources subject to the rule would be expected to be in compliance with the amended provisions for heat exchange systems, maintenance wastewater, in-process equipment subject to § 63.149, and process wastewater by April 22, 1999. Equipment subject to the other provisions of the rule would be expected to be in compliance by April 22, 1997, unless a compliance extension is granted. The EPA anticipates finalizing some portions of the proposed rule earlier than December 31, 1996. For example, the proposal would eliminate the need for filing some implementation plans that would otherwise be due December 31, 1996, and would allow the filing of requests for compliance extensions up to 4 months before the April 1997 compliance date. The EPA will attempt to take final action on these provisions as soon as possible after the close of the comment period in order to give sources as much lead time as possible.

II. Overview of Changes to Rule

With today's proposed action, EPA is proposing clarifying and correcting amendments to subparts F, G, H, and I of 40 CFR part 63. These proposed amendments include an extension of the compliance date to April 22, 1999 for process wastewater, heat exchange systems, maintenance wastewater, and in-process equipment subject to the provisions of § 63.149. These sections of the rule would be extensively revised by

today's proposal. The proposed revisions are intended to remove any ambiguity and clearly convey EPA's intent, to make the rule easier to read and implement, and to increase flexibility for the source.

The proposed amendments would also set a separate compliance date for wastewater streams affected by the omission of nitrobenzene from table 9 of subpart G. A three year compliance date is being proposed for process wastewater streams that are subject to control requirements due to the presence of nitrobenzene due to an error in the April 22, 1994 rule. The compliance date for other emission points remains April 22, 1997.

The proposed revisions to the wastewater sections of the rule have been redrafted to improve organizational structure and drafting clarity. One significant clarification would be to the definition of ''wastewater'' which would be revised to incorporate the concept that only when water is *discarded* from a process is it subject to the HON wastewater provisions. Additional changes would be made to the wastewater provisions to: (1) ensure that streams traveling from one piece of process equipment to another would be handled appropriately to avoid emissions to the environment, and (2) ensure that the changes in the wastewater definitions would not permit sources to dilute their waste streams prior to the point the streams are considered wastewater, thus avoiding control requirements. If a HON source owner or operator wished to ship waste off-site for treatment, the owner or operator may only ship to a facility that has certified that it will treat the waste to the standard required by the HON.

In contrast to the significant redrafting of the wastewater provisions, minor edits are proposed for other sections of the rule. In addition to removing ambiguity and increasing flexibility for the source, some revisions would reduce the reporting and recordkeeping burden for sources. The reporting and recordkeeping revisions would include changes which: reduce the number of copies of reports that must be submitted to EPA and the States; provide for alternative, less frequent recordkeeping of monitoring data where sources show no violations for prolonged stretches of time; and remove the requirement for most sources to file an implementation plan.

III. Compliance Date Changes and Other General Changes

A. Applicability of Rule

1. Designation of the Source

In today's amendments, EPA is proposing revisions to § 63.100, paragraphs (e) and (f) to clarify which equipment is included within the scope of the source regulated by this rule. These revisions are being proposed because the drafting and structure of paragraphs (e) and (f) in § 63.100 have caused confusion and raised concerns as to whether other equipment or activities not listed are included in the source. The proposed revisions to these paragraphs are intended to improve rule clarity.

The present wording of paragraph (e) of § 63.100 incorporates, inter alia ''wastewater and associated treatment residuals'' in the source. This text does not state explicitly whether waste management units, heat exchange systems, or maintenance wastewater are included in the source. The present designation of the source also does not include control devices or recovery devices used to comply with this rule. Some industry representatives have expressed concern that these types of equipment could be considered subject to section 112(g) of the Act because the equipment is not part of a source subject to a section 112(d) standard. To address this concern, the EPA is proposing to revise this paragraph by listing the specific categories of equipment and types of wastewater included in the source and by adding control and recovery devices to the items designated to be included in the source. The EPA is also proposing to revise paragraph (f) of § 63.100 to reverse the drafting structure to state that the listed items are included in the source, but are not subject to the control requirements of the rule. Based on discussions with industry, EPA has found that reversing the structure would make it more understandable to the regulated community and would reduce the chance of incorrect interpretation.

2. Definition of Chemical Manufacturing Process Unit (cmpu)

The EPA is proposing amendments to clarify the definition of cmpu and the definition of unit operation. The proposed revisions consist of clarifying that a cmpu consists of two or more unit operations and correcting the definition of unit operation to refer to the defined term ''distillation units'' instead of distillation columns. These proposed changes are expected to clarify the determination of applicability for facilities with integrated operations.

3. Applicability of Rule to Storage Vessels Located in a Tank Farm or Marine Terminal

The EPA is proposing amendments to clarify the applicability of the rule to storage vessels located in tank farms and marine tank farms. The proposed amendments being added as § 63.100(g)(3) would explicitly specify the procedures to be followed to assign the storage vessels to a process and then to determine the applicability of the rule. Due to an oversight, the provisions currently in § 63.100(g) of subpart F do not include instructions regarding allocation of tanks in remote locations.

Following issuance of the 1994 rule, EPA received inquiries regarding the applicability of the rule to storage vessels that are physically remote from the cmpu, but are located at the major source and connected to the cmpu by piping. Some of the inquiries raised questions regarding the distinction between storage vessels used for product storage and vessels used more for purposes of facilitating product distribution. Other inquiries concerned applicability of the rule where a dedicated product (or raw material) storage tank was located in the tank farm. Following a review of the rule language and the underlying analyses for the rule, EPA concluded that the record on this point was ambiguous and that the rule should be amended to clarify these issues. The proposed revisions to § 63.100(g) are based on the concepts presently used in the rule for assignment of equipment that is shared among several cmpus and on a basic assumption used in developing the rule that, which is typically a cmpu, includes raw material and product storage vessels.

The proposed provisions assign a storage vessel to a cmpu based on three decision rules. First, a storage vessel in a tank farm is considered to be part of a cmpu only if the cmpu does not have another intervening, storage vessel for product (or raw material). Where there is an intervening storage vessel, the boundary of the cmpu would end at that intervening storage vessel (and any associated transfer operations and other equipment) and would exclude the tank farm storage vessel. Second, if two or more cmpus (of those using the tank farm storage vessel) lack a co-located storage vessel, then the storage vessel at the tank farm would be assigned to a cmpu, according to the concepts of predominant use specified in § 63.100(g)(2). Third, if only one cmpu (of those that use the remote storage

vessel) lacks a co-located product (or raw material) storage vessel, then the remote storage vessel would be assigned to that cmpu.

The EPA expects that this assignment procedure will result in assignment of storage vessels in a manner consistent with normal management of facility operations. Specifically, it is expected that storage vessels that are an integral part of operation of a cmpu subject to the HON will be regulated under the HON and that storage vessels that are used to facilitate product distribution will be regulated as part of the organic liquids distribution source category and not under the HON.

4. Determination of Applicability of the Rule to Equipment Shared Among Integrated Operations

Today's proposed amendments include clarifying changes to the equipment assignment procedures specified in § 63.100 (g), (h), and (i) for storage vessels, transfer racks, and distillation units. Since the HON was issued in April 1994, EPA has received inquiries regarding the correct interpretation of the text in these paragraphs. Based on these inquiries and discussions with industry representatives, EPA has concluded that the questions and concerns are due to minor wording differences in paragraphs (g) and (h) and the absence of an explicit statement that paragraph (i) specifies the assignment procedures for shared distillation columns.

Today's proposed amendments would make the wording and structure of these paragraphs parallel. Specifically, the proposed revisions would make the wording of paragraphs (g)(1) and (h)(1) parallel to the wording in paragraphs (g)(2) and (h)(2), respectively. The proposed new paragraphs would add provisions to paragraph (i) that address the assignment of dedicated distillation units and would clarify that the assignment procedure is for distillation units shared among several processes. The proposed revisions also clarify the wording of the requirement to reassess the assignment of the equipment whenever there is a change in the use of the equipment.

5. Revision to Table 2 of Subpart F List of Regulated Hazardous Organic Air Pollutants (HAP's)

The EPA has received numerous requests for clarification of the definition of ''Polycyclic organic matter'' (POM) in table 2 of subpart F. The nature of these requests indicates that there is confusion regarding the scope of the definition. To eliminate this confusion, EPA is proposing to revise table 2 of subpart F to list the specific compounds that are to be regulated as POM in the HON. The specific compounds being listed are consistent with the historical working definition of POM, which emphasizes emissions from incomplete combustion and pyrolysis processes (49 FR 31680). This change is expected to improve rule clarity.

B. Compliance Dates

1. Compliance Date Extension for Wastewater Provisions

With respect to compliance dates, the final rule promulgated on April 22, 1994, provided that existing sources must be in compliance with the requirements of subparts F and G no later than April 22, 1997, unless an extension is granted in accordance with § 63.151(a)(6) of subpart G or § 63.6(i) of subpart A.

Today's proposal would change the compliance date provisions applicable to HON sources in two significant respects. These changes are included in § 63.100(k)(2) of today's proposed rule. First, § 63.100(k)(2)(ii) would set a new compliance date of April 22, 1999, for heat exchange systems, maintenance wastewater, in-process equipment subject to § 63.149, and process wastewater. Second, § 63.100(k)(2)(ii)(A) would set a new compliance date that is three years from the date of final publication for process wastewater streams and in-process equipment subject to § 63.149 that are subject to control requirements due to the contribution of nitrobenzene to the annual average concentration of Table 9 compounds.

The new compliance date for heat exchange systems, maintenance wastewater, in-process equipment subject to § 63.149, and process wastewater is being proposed because the changes to these provisions applicable to HON sources are sufficiently far reaching and complex to render those provisions effectively a new rule warranting a new compliance date. In contrast, the changes to other portions of the April 22, 1994, rule are less extensive, are more in the nature of corrections and clarifications, and EPA does not believe they jeopardize sources' ability to meet the April 1997 compliance date.

Section 112(i)(3) of the Act provides that existing sources are to be in compliance with applicable emission standards ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard.'' The April 22, 1994, final rule specified a compliance date applicable to wastewater streams and heat exchange systems that was three years from the issuance of that rule. Section 112(d)(6) provides authority for the Administrator to revise the emission standards issued under section 112 ''no less often than every 8 years.'' EPA believes that the authority to revise the standards inherently includes the authority to set new compliance dates for revised rules. Any other approach would require existing sources to come into compliance with potentially extensive revisions immediately, just as if they were new sources. Obviously, Congress provided EPA discretion to set a compliance date for existing sources of up to three years in order to provide time for retrofitting of controls where necessary. Thus, due to the extensive nature of the revisions to the provisions applicable to heat exchange systems and wastewater streams, the creation of requirements for in-process equipment subject to § 63.149, and the proximity to the April 1997 compliance date in the original rule, EPA is setting a new compliance date for those provisions.

EPA believes that two years from the otherwise applicable compliance date will be sufficient for all sources to come into compliance with the new wastewater and in-process equipment provisions. However, should any source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, such source may request an extension of up to one year in accordance with § 63.151(a)(6).

The new three year compliance date in § 63.100(k)(2)(ii)(A) for process wastewater streams and in-process equipment subject to § 63.149 that are subject to control requirements due to the presence of nitrobenzene, is being proposed because of an error in the April 22, 1994, rule. Nitrobenzene is a HAP included on the section 112(b) list. However, due to an oversight, it was not included on table 9 (which lists HAPs subject to the wastewater provisions) in the April 22, 1994, rule. Thus, there was confusion as to whether or not the presence of nitrobenzene in wastewater streams should be a factor in determining whether such streams were Group 1 or Group 2. This error was corrected in the December 12, 1995, correction notice (60 FR 63624 (December 12, 1995)). However, due to the extensive changes to the wastewater provisions and the uncertainty caused by the initial omission of nitrobenzene from table 9, EPA is proposing to set a new compliance date for wastewater streams affected by the error.

EPA seeks comment on its proposal to set new compliance dates in § 63.100,

paragraphs (k)(2)(ii) and (k)(2)(ii)(A), and in particular seeks comment on the appropriateness of the particular dates proposed.

2. Timing of Compliance Extension Requests

The April 22, 1994, rule requires that requests for compliance extensions be submitted one year prior to the otherwise applicable compliance date. The EPA is proposing to revise this requirement, which is in § 63.151(a)(6)(i), to allow submittal of requests up to 120 days prior to the compliance date. The EPA is also proposing to add a new paragraph (iv) to § 63.151(a)(6) that would allow requests during the last 120 days before the compliance date if the need arose during that 120 days and if the need was due to circumstances beyond the reasonable control of the owner or operator. Submission of a compliance extension request would not stay the applicability of the rule to the applicant source during the pendency of the request.

The EPA is proposing these revisions in recognition that review of most requests for compliance extensions can be completed within 4 months and it is unlikely that it would require 12 months to complete review of the request. The EPA is also proposing to allow submittal of extension requests up to the compliance date in recognition that unforeseen difficulties, such as construction or operational difficulties, can arise in the last moments of compliance planning. The proposed provisions in § 63.151(a)(6)(iv) are also considered necessary in the case of this rule because it is unlikely that these proposed revisions will be final more than 4 months prior to the April 22, 1997, compliance date for certain control requirements. Any changes in the wording or requirements of the final rule could affect compliance planning for a source. Therefore, EPA believes that it is necessary to provide some opportunity for applications for compliance extension requests after the date that is 4 months prior to the compliance date.

3. Clarification of Compliance Periods

The proposed revisions to subpart F also would add a new paragraph (k)(9) to § 63.100, and a new paragraph (g) to § 63.162 to clarify that when the rule specifies a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), this refers to standard calendar periods unless it is specified otherwise in the section or paragraph that imposes the requirement. The current rule does not specify this, and this text is being added to the rule to remove any potential for ambiguity. The new § 63.100(k)(9) and § 63.162(g) also provide that time periods may be changed by mutual agreement between the owner or operator and the Administrator, as provided in subpart A of this part. Finally, this new set of provisions also provides that if the rule requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided the task is conducted at a reasonable interval after completion of the previous task. When the rule was originally drafted it was assumed that this could be done, but an oversight in drafting language specifying this was omitted from the rule.

C. Heat Exchanger Provisions

In today's amendments, the EPA is proposing new requirements for monitoring heat exchange systems for leaks of process fluids into cooling water. The proposed § 63.104 would replace the existing provisions in § 63.104 of subpart F. The proposed revisions are being made to address issues with the existing provisions related to the availability of monitoring methods with sufficient analytical sensitivity, lack of flexibility in some of the requirements, and the burden associated with the monitoring requirements. The major revisions to this section of the rule and the reasons for the changes are described below.

1. Conditions Exempted From Monitoring Requirements

The existing provisions of § 63.104 exempt two categories of heat exchange systems from the monitoring requirements. The first exempt category is heat exchange systems operated with a greater pressure on the cooling water side. These systems were exempted because any leakage would be into the process fluid, not into the cooling water, so it is not necessary to monitor the cooling water for the presence of process fluids. The second exempted category is once-through heat exchange systems operating with a National Pollutant Discharge Elimination System (NPDES) permit allowable discharge limit of less than 1 ppm. These two categories were exempted because the provisions of § 63.104 would impose a redundant requirement. The proposed revisions to § 63.104 would extend this exemption to three additional cases. First, facilities with NPDES permits that require monitoring of a parameter or condition that would detect a leak of process fluids and requires the owner or operator to report and correct leaks when the parameter or condition exceeds the normal range. For facilities with such NPDES permit the requirements in § 63.104 would be redundant with the NPDES permit requirement. Second, systems where there is an intervening cooling fluid (containing less than 5% by weight of the applicable HAP's) between the process and the cooling water would be exempted. In these systems, the monitoring requirements of § 63.104 are unnecessary because leaks of process fluids would be detected in intervening process equipment before there could be a leak into the cooling water. The third exempt category is systems used to cool process fluids that contain less than 5% by weight HAP's. This last category of heat exchange systems is being added because it is consistent with the intent that provisions only require monitoring when HAP's are present in concentrations greater than 5% by weight.

2. Hazardous Air Pollutants Subject to Monitoring Requirements

The April 22, 1994, rule requires owners or operators of recirculating heat exchange systems to monitor for organic HAP's listed in table 2 of subpart F, except for four water-reactive HAP's. Today's proposed amendments would reduce the number of organic HAP's subject to the monitoring requirement for these recirculating systems. The revised list of organic HAP's subject this requirement is provided in proposed table 4 of subpart F. There are no proposed changes to the organic HAP's subject to the monitoring requirement (found in table 9 of subpart G) for once-through cooling systems.

Since the April 22, 1994, rule was issued, EPA has received inquiries regarding the basis for the requirement to monitor for table 2 compounds in cooling water of recirculating heat exchange systems. Some industry representatives have questioned the inclusion of compounds that are not on table 9 of subpart G and have argued that cooling towers are ineffective at air stripping relatively nonvolatile compounds (i.e., compounds not in table 9) listed in table 2 of subpart F. In response to these questions, EPA modeled the potential air emissions of each table 2 compound from a process cooling tower. This analysis indicated that there are about 23 compounds listed in table 2 of subpart F that have no, or very insignificant, potential for emissions. Examples of organic HAP compounds that were found to have little potential for volatilization in a cooling tower are ethylene glycol and acrylamide. Based on this modeling

analysis, EPA concluded that it would be appropriate to apply monitoring requirements to some compounds on table 2 of subpart F as well as to compounds listed on table 9 of subpart G. This conclusion is based on finding that there are a number of compounds which have an insignificant potential for emission from typical wastewater collection and conveyance systems but which can have fairly substantial losses when sent through a process cooling tower. Proposed table 4 lists the compounds modelled to have significant emission potential when sent through a process cooling tower. Also, in order to limit monitoring to only those compounds calculated to have significant emission potential and to eliminate unnecessary burden, proposed table 4 lists specific glycol ethers instead of the family of compounds. This was done because different glycol ethers have significantly different physical properties.

3. Added Flexibility to Monitoring Requirements

The rule currently requires monitoring of cooling water using any EPA approved method in 40 CFR part 136 as long as the method can measure concentrations of the compound as low as 1 ppm. Since issuance of the rule in April 1994, EPA has received information that the methods in 40 CFR part 136 are not available for some HAP's and that the additional requirement for measurement sensitivity further reduces the number of available methods. To correct these implementation problems, EPA is proposing the following revisions to § 63.104.

The proposed § 63.104 includes provisions that would allow monitoring of a surrogate indicator of a heat exchanger leak in lieu of monitoring for specific organic HAP's in the cooling water. This new option is being proposed because of analytical limitations and costs of measuring some of the organic HAP's regulated by this provision and because, in some cases, the intent of this section can be met by using a surrogate indicator. Proposed § 63.104 also includes provisions that would allow monitoring of a surrogate indicator such as ion specific electrode monitoring, pH, or other physical properties of the cooling water or process operations. The EPA expects that this option would be useful in cases where there are no EPA approved methods for any compounds in the process or where there are easily measured process parameters that provide a reliable indication of heat exchanger leaks. Under this new alternative, an owner or operator would prepare and implement a monitoring plan that would specify the parameters that would be monitored and the criteria which, if exceeded, would constitute a leak. The owner or operator would have to update the monitoring plan anytime a substantial leak is detected by methods other than those described in the plan and identify the methods in the plan that did not detect the leak. These provisions were developed based on consideration of existing programs and work practices at some SOCMI facilities for detecting leaks of process fluids into cooling water. It is expected that this alternative will be less burdensome than the existing requirements and may allow use of existing procedures to meet this requirement.

The EPA is also proposing to revise the minimum sensitivity requirement for analytical methods from 1 ppm to 10 ppm. This change is being proposed to increase the number of methods available for use in the organic HAP monitoring alternative and to reduce the cost of this monitoring. The EPA selected 10 ppm as the minimum sensitivity for the method based on consideration of the detection limits for the EPA 600 series methods.

The EPA also realizes that even with this increase in the minimum sensitivity to 10 ppm, there will be a few compounds for which there is no approved quantitative analysis method. Because of this problem, the existing provisions of § 63.104(b) were revised to specify that the monitoring of organic HAP's may be to monitor a subset (one or more) of the organic HAP's in the cooling water. The EPA expects that this change in the wording of the organic HAP monitoring alternative will allow monitoring of the compound (or compounds) that can be measured and will remove the appearance that the monitoring has to be capable of detecting every HAP at the minimum sensitivity.

4. Miscellaneous Clarifications to § 63.104

Today's proposed § 63.104 would allow sampling across the cooling tower, at the entrance and exit of each heat exchange system, or any combination of heat exchangers (e.g., across a cmpu or at a plant site). The April 1994 rule specified that the sampling was to be across the cooling tower. The EPA is proposing to revise this requirement because of concerns that have been expressed that the present rule is inflexible and requires monitoring at a location that is less cost effective. The April 1994 rule specified monitoring across the cooling tower because of public comments received on the proposed rule. Today's proposed revisions differ from the original proposed language in that there is more flexibility in the selection of sampling locations and the terminology has been clarified in that the rule now specifically defines the convention for entrance and exit of systems.

Today's proposed revisions to § 63.104 include clarification and correction of the existing language that defines a leak. The wording of the existing provision in § 63.104(b)(1)(v) has resulted in inquiries regarding the proper interpretation. Proposed § 63.104(b)(6) specifies the type of statistical test as well as the significance level in defining a leak. The EPA requests comment on whether the revised language will appropriately identify and minimize the number of false positive indications of a leak.

The proposed § 63.104 would also revise the delay of repair provisions to allow delay until the next shutdown if a shutdown is planned within 2 months of determination that delay of repair is necessary. The proposed revisions to § 63.104 would also allow delay of repair up to a maximum of 120 days if the necessary parts or personnel are not available. The April 1994 rule only allows delay of repair when it can be demonstrated that immediate shutdown for repair would create more emissions than the emissions that would result from delaying repair of the leaking heat exchanger until the next shutdown. The proposed revisions to the delay of repair provisions of the rule are being made to make these provisions workable and to minimize debate over modeling of emissions from heat exchanger systems.

D. Control Alternatives

1. Routing Emissions to a Process

The EPA proposes to add provisions to the rule to allow routing of emissions to a process or fuel gas system as a means of compliance where appropriate. Currently, subparts G and H are not amenable to use of recycling to a process or fuel gas system as a means of compliance with the control requirements. These revisions would allow use of this compliance approach without defining the process or fuel gas system as a control device and imposing, in turn, control device monitoring and recordkeeping requirements. This change is being made to encourage use of pollution prevention control approaches and to reduce the monitoring and recordkeeping burden of the rule.

The proposed amendments consist of: (1) revisions to the definitions for

process vent and vapor balancing system and addition of definitions for fuel gas and fuel gas system in subpart F; (2) amendments to the storage vessels and transfer operations provisions in subpart G; and (3) addition of a definition of ''route to a process'' and inclusion of this option in the list of control requirements in subpart H. The definitions for fuel gas and fuel gas system are based on the definitions recently promulgated in subpart VV, part 60 and in subpart CC, part 63 (Refinery NESHAP). The proposed definitions have been reworded slightly to remove the refinery-specific references and to refer to combustion devices more generally instead of listing specific types of combustors.

The proposed amendments to subpart G to allow recycling to a process for storage vessels and transfer operations require that the recycled material be used or consumed in the same manner as a material that fulfills the same function in the process, be transformed into a material that is not an organic hazardous air pollutant, or be recovered or incorporated into a product. These restrictions are placed on this option to avoid the potential for sham claims of recycling. The proposed provisions for storage vessels also include provisions to allow limited by-pass of the process or fuel gas system during periods of maintenance or repair of the process or fuel gas system. These provisions are necessary because these storage vessels would not necessarily be emptied during these maintenance periods and emissions would continue from the vessel. Since more emissions would result if the rule were to require emptying and degassing of storage vessels during these periods than if the vessels were allowed to vent to the atmosphere, provisions are being added to § 63.119 to allow by-pass of the fuel gas system or process during these periods. These provisions specify the conditions that must be met during these by-pass periods to minimize emissions. Similar provisions are not being proposed for transfer operations because it is not believed to be necessary. Loading operations can normally be postponed until the process or fuel gas system is operational again.

The proposed amendments to subpart H consist of addition of a definition of ''route to a process'' and changes to the control options for pumps, compressors, etc. The definition of ''route to a process'' incorporates the key concepts used in subpart G provisions for storage vessels and transfer operations. No provisions have been included in the proposed amendments to subpart H to allow by-pass during periods of maintenance or repair of the process or fuel gas system. The EPA does not believe that parallel provisions are needed for equipment leaks.

2. Lower Bound Concentration Performance Standard

The EPA is proposing to add an alternative performance standard limit of 20 parts per million by volume concentration limit for noncombustion control devices used to comply with the process vent, storage vessel, and wastewater provisions in subpart G and the equipment leak provisions of subpart H. This option would be in addition to the present performance standard of 98 or 95 percent removal of total VOC or HAP, respectively, in these sections of the rule. This lower bound concentration standard is being added to those sections of the rule where EPA believes there would not normally be significant amounts of dilution air and any attempts to circumvent could be detected. The EPA is proposing this change to the rule to provide a lower bound concentration level for use in cost effective design of control devices and recovery devices such as carbon adsorbers and condensers.

This lower bound concentration performance standard is proposed to be added to the rule to reflect actual performance of these control devices and to make the rule's requirements consistent with the underlying cost and emission analyses for this rule. Most recovery devices (e.g., condensers, adsorbers, etc.) are designed to achieve a specific outlet concentration for a maximum loading scenario for a stream with specific characteristics. The specific outlet concentration of a given system is a function of the equilibrium and kinetic limits for the technology and the characteristics of the gas stream and the cost of the system. For any given design, these devices will typically reduce emissions to the same concentration level over a relatively wide range of inlet concentrations. Thus, when the inlet concentration is substantially below the design maximum loading conditions (and begins to approach the residual level in the outlet stream) the recovery device efficiency will decrease. When this occurs the outlet concentration is the same or lower than the outlet concentration during maximum loading conditions. The cost and emission control estimates used in development of this rule were based on maximum design loading conditions and did not reflect operations over the full range of potential operating conditions for the SOCMI industry. Therefore, it is necessary to specify a lower bound concentration performance level in addition to the removal efficiency in the rule to ensure that this rule is implemented as intended. Where EPA considered the use of this alternative to be appropriate, the proposed amendments would add provisions to specific sections to allow use of the 20 ppm standard.

This addition of a lower bound concentration limit to the performance standard will also encourage use of devices that recover and allow for reuse of materials and will remove an inequity between requirements for different types of control equipment. With this additional control alternative, the requirements for process vents, storage vessels, vapor control devices applied to certain waste management units, and equipment leaks will be consistent with the requirements for transfer racks.

This lower bound concentration standard is not being allowed as an option for compliance with the enclosed process unit alternative in § 63.172 of subpart H or with the control requirements for surface impoundments subject to § 63.134 of subpart G. The use of this lower bound concentration limit is considered inappropriate in those situations because of the large volumes of dilution air involved.

3. Recapture Devices

The EPA is proposing to revise the rule to clarify the requirements for equipment such as adsorbers, condensers, and scrubbers that are used to recover materials (but not primarily for use, reuse, or sale), and are used to meet the control requirements. The proposed amendments introduce a new term, ''recapture device'', to identify these devices, which capture emissions and then send the material for ultimate disposal, revise the definition of control device to include this concept, and revise various sections of the rule to refer to recapture devices. Currently, the rule allows the use of control devices and recovery devices and specifies the applicable monitoring and recordkeeping requirements by type of equipment (e.g., adsorbers, etc.). However, the rule does not indicate how to treat a non-combustion device that is not used as a recovery device (as defined in the rule).

The EPA is proposing to revise the rule in this manner in order to address the regulatory void for non-combustion/non-recovery devices while preserving the approach used in this rule (and earlier rules) to differentiate between process and control in this industry. The existing definitions in the rule for recovery device and control device reflect the regulatory approach used in

the NSPS standards for process vents associated with distillation operations, air oxidation reactors, and other reactors. Under this approach, equipment is considered to be part of the process if the recovered materials are used, reused, or sold. The NSPS standards for process vents and the HON process vent provisions treated all condensers, adsorbers, scrubbers as ''recovery devices'' and never considered situations where this equipment could be used to capture the emissions and then send the material for ultimate disposal. Since these uses of these types of equipment do occur and the approach used to distinguish between process and control was an integral part of the data analysis used to support this rule, the EPA concluded that the best approach would be to define a new term to identify this additional category of equipment and to explicitly identify this equipment and the monitoring requirements in the rule.

4. Industrial Furnaces

In today's amendments, the EPA is proposing to include RCRA-regulated industrial furnaces under the HON's provisions for boilers. This change is being proposed because industrial furnaces, like other RCRA-regulated combustion devices, are subject to RCRA requirements which accomplish the same purpose as some HON provisions. For example, owners and operators are already required to demonstrate that industrial furnaces are capable of achieving the RCRA-required destruction and removal efficiency. A second performance test under the HON is not considered necessary. By amending the definition of ''boiler'' to include industrial furnaces, the rule would treat industrial furnaces similarly to other RCRA-regulated combustion devices.

The EPA has chosen to include industrial furnaces within an existing HON definition, the definition of ''boiler'', rather than creating separate regulatory provisions for industrial furnaces throughout subparts F, G and H. This decision is based on a desire to avoid making the HON longer and more complex. The EPA recognizes that some confusion may result from calling these devices ''boilers'' in the HON, when they are known as ''industrial furnaces'' under RCRA. However, this potential is small, and can be managed through appropriate definitions.

The EPA considered several alternatives to using the definition of ''boilers'' to address industrial furnaces. All these alternatives presented more serious difficulties than using the term ''boilers.'' For example, except for one instance in the wastewater provisions of subpart G (an error which is being corrected by these amendments), the HON does not use the term ''industrial furnace.'' In order to use that term consistently, it would have to be added to multiple locations throughout three subparts, and a new definition would probably be needed. In contrast, the provisions for ''boilers'' are already appropriate for industrial furnaces. Thus, the desired result can be accomplished with less revision of the regulatory text.

The EPA also considered the option of calling these devices ''incinerators'', because many industrial furnaces more closely resemble incinerators than boilers, i.e., they combust organic HAP without producing steam. However, in this case there would still be confusion because RCRA regulations differentiate between incinerators and industrial furnaces. Additionally, incinerators and industrial furnaces are regulated under different subparts of the RCRA regulations. This would make the HON's cross-references to RCRA regulations extremely complex, if the EPA attempted to address industrial furnaces in the existing HON provisions for incinerators. In contrast, boilers and industrial furnaces are regulated in the same subpart of the RCRA regulations (40 CFR part 266, subpart H), so that the existing cross-references may be used without revision. After balancing all these factors, the EPA concluded the best approach would be to include industrial furnaces within the HON definition of ''boiler.''

E. Monitoring/Recordkeeping/Reporting Provisions

1. Correction to Monitoring Requirements for Acid Gas Scrubbers

The EPA is also proposing corrections to the requirements for continuous monitoring of gas flow entering an acid gas scrubber. In cases where a scrubber is used after a combustion device for halogenated streams, subpart G currently requires that a flow meter with a continuous recorder be installed at the scrubber inlet to measure gas flow. The EPA has received new information that demonstrates that continuous monitoring of this acid gas stream is impractical due to the harsh conditions at the scrubber inlet. A continuous monitoring device would be expected to have a very short service life due to the combination of high temperature and corrosivity/low pH. Thus, it would be extremely costly to comply with the current requirement for continuous monitoring of gas stream flow. Therefore, the EPA is proposing to revise § 63.114(a)(4)(ii) and § 63.127(a)(4)(ii) to allow three different options for determining gas flow. Each of these options would provide sufficient data to determine a liquid/gas (L/G) ratio for use in monitoring operation of the acid gas scrubber.

The first option being proposed would allow owners or operators to determine gas flow to the scrubber by using the design blower capacity, with appropriate adjustments for pressure drop. This would provide a ''worst case'' gas flow. If the required compliance demonstration showed that a scrubber could meet the emission reduction requirements of subpart G for hydrogen halides and halogens during these worst-case flow conditions, the EPA anticipates that compliance would also be achieved during conditions of lower gas flow.

In the second proposed option, the EPA recognizes that some post-combustion scrubbers, regulated under RCRA, are already required to determine a L/G ratio to demonstrate compliance with emission reduction requirements. The EPA is proposing that methods of determining gas flow which have been utilized to comply with pre-existing RCRA regulations should also be acceptable for purposes of subpart G. This proposed option also provides that a determination made before the compliance date for this rule may be used in the compliance demonstration if it is still representative.

Finally, the EPA is proposing that owners or operators may develop a gas flow determination plan. The plan would specify a reliable method for determining gas stream flow, to provide a representative or at least a worst-case flow rate during representative operating conditions. Recordkeeping requirements would apply. The EPA believes that this performance-oriented option is necessary due to the wide variety of technologies and process configurations in existence. For example, many SOCMI combustion units utilize multiple scrubbers in series. This may require a different approach to determining gas flow, than when a single scrubber is used.

2. Implementation Plans

With today's proposed amendments, EPA is proposing to remove the requirement for submittal of implementation plans for existing sources' emission points that are not included in an emissions average. Under the April 22, 1994, rule, owners or operators, who have not yet submitted an operating permit application with the information specified in § 63.152(e), were required

to submit by April 22, 1996, an implementation plan for points not included in an emissions average. On February 29, 1996 (61 FR 7716), this date was revised to December 31, 1996, to allow time for owners or operators of sources to consider recent changes to the rule and to allow for expected further revisions to the rule.

This change is being proposed because it no longer appears that this report would serve a useful function, and the implementation plan for points not included in an emission average represents a duplicative and unnecessary burden with the Notification of Compliance Status. By December 31, 1996, many, if not most, sources will have already submitted the information covered by the implementation plan in permit applications. Any remaining sources will be covered by subsequent permit applications. Thus, the implementation plan requirement is redundant and, therefore, unnecessary. Furthermore, the implementation plan for points not included in an emission average would not have been subject to EPA approval. Finally, eliminating the implementation plan requirement would make the HON consistent with later MACT standards for the same types of emission points which have not required this report.

It should not be inferred from this proposal to eliminate implementation plans for points not included in an emissions average that the requirement for an implementation plan for points included in an emission average will be eliminated. This report is needed to ensure that a proposed average will meet all the criteria in the rule and that it will result in credits exceeding the debits. Because of the complexities and site-specific nature of emissions averaging, this report will remain subject to EPA approval.

3. Startup/Shutdown/Malfunction Plans

The EPA is proposing to revise several sections in the rule to clarify the requirements for start-up/shutdown/malfunction periods. These clarifications include revisions to the definitions of ''*start-up*'' and ''*shutdown*'' and revisions to the monitoring and recordkeeping requirements in § 63.152 of subpart G. These changes are being proposed to address several oversights in the original drafting and to make the requirements for start-ups/shutdowns/malfunctions more explicit to avoid potential misunderstanding of the requirements.

Revisions are being proposed to the definitions for the terms ''*start-up*'' and ''*shutdown*'' to make these terms more consistent and to extend these terms to include part of a cmpu (such as a wastewater tank) as well as the entire unit. The present definitions also do not apply to control equipment used to comply with the rule or to waste management units. Thus, if there were a start-up/shutdown/malfunction of an individual item of equipment or an item of equipment not presently included in the definition, it would not be permissible for the owner or operator to follow the start-up/shutdown/malfunction plan because it would not apply. Since it was intended that the start-up/shutdown/malfunction plan would be followed in such situations, the definitions are being revised to reflect this intent. The definition of ''start-up'' is also being revised to include activities associated with initial start-up, testing of equipment, and transitional conditions due to changes in product for flexible operation units. The current definition for ''start-up'' erroneously excludes these activities which should be addressed under the start-up/shutdown/malfunction plan. The proposed revisions correct these drafting errors. As part of the correction to the definitions for ''start-up'' and ''shutdown,'' EPA is also proposing to add two paragraphs to § 63.102(a) to clarify operational requirements during periods of start-up/shutdown/malfunction. These provisions are necessary to avoid misuse of the revised definition of the term ''shutdown.''

Revisions are being proposed for several paragraphs in § 63.152 to clarify that monitoring is not required during periods when the source is not operating and that the start-up/shutdown/malfunction plan details the monitoring requirements during periods when the plan is applicable. Currently, the rule does not explicitly address monitoring requirements during periods when the source is not operating. Because of concerns that this absence of direction could be interpreted as requiring monitoring after shutdown of a source, clarifying language is being proposed to remove any potential for misinterpretation. Minor revisions are proposed to § 63.152, paragraphs (c) and (f) to clarify that data recorded during periods of start-up/shutdown/malfunction are not excursions and are not to be included in averages of monitoring data. These changes are being made to ensure that it is clear that during periods of start-up/shutdown/malfunction the source is required to follow the procedures in the start-up/shutdown/malfunction plan in lieu of requirements that would otherwise apply to the affected emission points under subpart G.

4. Alternative recordkeeping provisions

Today's proposed changes to the rule include addition of new provisions to allow use of an alternative recordkeeping system that records fewer data points during periods of routine compliance provided the system meets specified criteria and the system is verified annually to meet the requirements. The proposed provisions would provide an alternative to the existing provisions in § 63.152(f) for data compression systems. These new provisions are expected to reduce recordkeeping burden for some facilities.

The proposed alternative recordkeeping provisions allow an owner or operator to use an exception-only recording system provided the system meets specified criteria and the system is demonstrated to operate properly initially, annually, and on demand. The new provisions require that the monitoring system be able to: (1) Detect abnormal or ''impossible'' data (e.g., temperature reading of −200°C on a boiler), (2) detect inappropriate ''flat-line'' data, (3) alarm at a set-point that is related to a limit on a parameter range, (4) generate a running daily average that could be used by plant personnel or to satisfy an inspector that the system is operating and the parameter is within established limits, and (5) allow a system check on demand during normal operations to verify that the system is recording data properly. A description of the monitoring system, and the most recent superseded description, must be retained. The current description would be retained at least 5 years and longer, if it has not been superseded. It must be retained either on-site or by a method that allows access within two hours after a request. The most recent superseded description would be retained for at least 5 years from its creation but could be stored off-site if it is more than six months old. If the superseded version is already more than 5 years old (at the time it becomes superseded) it may be discarded immediately. The facility would select the specific levels for the alarm set points considering the variability of the process operations and the control device stability under different operating conditions. It is expected that these alarm set points would be established at a level such that corrective action could be taken to prevent occurrence of a parameter excursion. The alternative provisions allow the owner or operator to retain

only the daily average value under most circumstances. If no excursions occur in a period of 6 consecutive months, the owner or operator is not required to record the daily average, but must record and retain weekly at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction. If a non-excused excursion occurs, the owner or operator must immediately resume retaining the daily average value for each day. An owner or operator electing to use this alternative is required to notify EPA in the Notification of Compliance Status or periodic report with updates whenever there is a change in the frequency of data retention.

The proposed alternative system in § 63.152(g) differs from the alternative system for data compression systems provided in § 63.152(f) and the existing continuous monitoring requirements in that the § 63.152(g) alternative bases compliance on demonstration of a system and records for periods of abnormal operation. The EPA believes that this alternative provides an opportunity to use current technology to reduce the cost of monitoring and compliance demonstration. It is also anticipated that facilities electing to use these provisions will have better emission control than facilities not using an early warning type system. Because the system has to pass an initial, annual, and on demand performance demonstration, EPA believes that there are sufficient safeguards to ensure the system is operated properly.

5. Miscellaneous Clarifying Edits to Recordkeeping Requirements

The proposed amendments to the rule include several other revisions to reduce the recordkeeping burden of the rule in addition to those described above. First, the proposed amendments include an additional alternative for cmpus that do not use as a reactant, or make as a product, any of the organic HAP's listed in table 2 of subpart F. Parallel changes are also being proposed for similar documentation requirements in subpart I. The new provisions, which would be added to § 63.103(e) and § 63.192(k), would allow an owner or operator to document the inapplicability of the rule on the request of an inspector. This alternative is being provided because it was never EPA's intent to impose an ongoing recordkeeping requirement on sources not subject to the rule and because the current provisions can be interpreted to impose such a requirement.

EPA proposes to revise § 63.103(c) to remove the requirement for an owner or operator to maintain copies of reports if the report has been sent to the EPA Regional Office and the State agency. If the EPA Regional Office has waived the requirement for submittal of reports to the Region, the owner or operator is not required to maintain copies of the reports. This revision is being made due to concern that misplacing a copy of a report would be a violation, even though the report had been properly submitted. This was not EPA's intent.

It is also proposed to revise § 63.103(c) to reduce the volume of records that must be stored on-site. Concern has been expressed that on-site storage is often limited and more costly than off-site storage. Subpart F currently requires the most recent 2 years' records to be stored on-site. The proposed revision would specify that at least 6 months' records either be stored on-site or be available within 2 hours by any means. The remaining 4 and one-half years worth of records may be retained off-site. A definition of ''on-site'' would be added to clarify that the records may be kept anywhere at the source, such as a central filing area. These changes are being made to clarify what the necessary records are and to specify the performance objective, and not the method, that must be used to comply with the requirement.

The proposed amendments to subpart F include revisions to § 63.103(c)(2) documentation requirements for periods of start-up/shutdown/malfunction. The proposed changes would make these provisions consistent with the requirements in subpart A (General Provisions) to document and report periods in which excess emissions occur. Another proposed change to reduce burden and simplify the reporting requirements is the elimination of the difference in submittal dates for reports sent by U.S. Mail and by other delivery services. This proposed revision to § 63.103(d)(1) specifies that reports shall be submitted on or before the relevant dates and the provisions in § 63.103(d)(1)(i) and (ii) would be removed from the rule. This change is being made to eliminate an unnecessary restriction.

The proposed amendments include revisions to table 3 of subpart F to clarify the applicability of specific sections in subpart A to subpart H. Table 3 to subpart F currently does not explicitly detail the applicability of the requirements to subpart H, and there are some incorrect references to subpart A. The proposed revisions to the table correct these errors.

6. Miscellaneous Changes to Monitoring Requirements

The EPA is proposing to clarify the instrument installation, calibration, operational, and maintenance requirements that occur throughout subpart G for instrumental monitoring of control devices. The current rule requires the owner or operator to follow the instrument manufacturer's recommendations for installation, calibration, and maintenance. The proposed revision would allow the owner or operator to develop a written procedure that provides adequate assurance that the equipment would reasonably be expected to monitor accurately. This revision is being proposed because many facilities in the SOCMI industry do not purchase off-the-shelf monitoring systems. Instead, it is common in this industry to develop monitoring systems from equipment purchased from several suppliers. Thus, it is likely that there are no manufacturer's instructions for the particular system installed. Even in cases where a monitoring system is purchased and used without substantial modification, the environment in which the instrument is operating may differ from the manufacturer's expected conditions sufficiently to make the manufacturer's recommendations meaningless or inappropriate. The proposed amendment would provide the necessary flexibility while preserving the intent to ensure accurate data.

Today's proposed amendments also clarify that the requirement to monitor regeneration stream ''mass flow'' in carbon adsorbers means volumetric flow of the regeneration stream. This requirement occurs in several places in the rule (e.g., 40 CFR § 63.114(b)(3)). The language in these sections is being revised because there is concern that the word ''mass'' might be misinterpreted as prohibiting existing types of monitoring that meet the intent of the requirement. The purpose of the requirement is simply to monitor to show that the carbon beds are being regenerated and maintained properly. While there are systems that provide a measure of the mass by monitoring several parameters and converting the results to mass, these systems as well as volumetric flow metering systems all start with measurements of volume. The proposed amendments replace all existing references to ''mass flow'' with ''mass or volumetric flow.''

The EPA is also proposing to amend subpart G by revising the definition of ''flow indicator'' and by revising the regulatory language specifying the

requirement for monitoring by-pass lines (e.g. § 63.114(d)(1)) to be consistent with the provisions and definitions in subpart H. The proposed definition includes reference to devices that detect the potential for diversion of a stream by methods other than ''flow'' monitoring and the by-pass monitoring requirements no longer refer exclusively to the presence of flow or imply that flow has to be measured. The revised definitions and rule provisions allow use of any means that will provide an indication of diversion of the stream from the control device.

7. Manual Recordkeeping Provisions

The EPA is requesting comment on whether the provisions in § 63.151(g)(3) for manual recordkeeping systems should be revised to allow requests for approval of monitoring on a less frequent basis than once every 15 minutes. The EPA has received requests that this provision allow monitoring once per 8-hour shift (or less frequently) if the owner or operator can demonstrate that operating parameters for the control device do not vary significantly over time. Examples of systems that the requestor believed should require only limited monitoring include condensers and acid gas scrubbers that vary slowly over time. The requestor believed that the present rule requirements impose a significant burden on facilities without automated recording systems since plant personnel would have to expend considerable time recording data.

In previous decisions on requests for alternative monitoring systems for standards established under 40 CFR parts 60 and 61, EPA has sometimes allowed less frequent monitoring based on consideration of the level of the actual emissions in relation to the standard and the control technology stability. These reviews have considered the process operating characteristics and the nature of the types of control problems that could occur. In situations where it is extremely unlikely that a significant emission event could go undetected, less frequent monitoring has been allowed. If EPA were to revise subpart G to allow less frequent monitoring for facilities with manual recordkeeping systems, it is likely that the provisions would require that the emission point be operated at a level substantially below the level of the standard (e.g., a TRE greater than 4, a 99 percent reduction when the rule requires a 95 percent reduction, or a substantially lower emission rate than allowed), and its availability would be limited to certain control technologies. Monitoring less frequently than once per hour might be appropriate for carbon adsorbers and some absorbers but less frequent monitoring would not be appropriate for equipment such as condensers. Adsorbers tend to exhibit failure over a relatively long period of time while condensers can fail quickly if a compressor fails or if flow rates through the condenser are increased significantly. Monitoring a condenser once a day could permit a significant undetected emissions episode. The EPA is not currently proposing a reduced frequency of monitoring. However, the EPA requests comment on the need for a reduced frequency as well as the appropriate criteria for allowing the use of less frequent monitoring (such as once per shift) and the basis for the recommended criteria.

F. Overlap with Other Regulations

1. Benzene Waste NESHAP

The April 22, 1994 rule requires that sources with wastewater streams subject to control requirements in the HON and Benzene Waste NESHAP (40 CFR part 61, subpart FF) comply with both rules. Since April 1994, members of the regulated community have objected that this requirement unnecessarily increases the cost of demonstrating compliance and complicates management of environmental programs at a facility without providing a corresponding environmental benefit. To address these concerns, EPA is proposing to add a compliance option to § 63.110(e)(1) that would allow some consolidation of the inspection, monitoring, recordkeeping, and reporting requirements of these two NESHAP.

The proposed amendments would allow an owner or operator to use the wastewater provisions of this rule as compliance with the provisions of the Benzene Waste NESHAP provided two conditions are met. First, the owner or operator must comply with the wastewater provisions of subpart G. Second, for any Group 2 wastewater or organic stream whose benzene emissions are subject to control under the provisions of the Benzene Waste NESHAP, the owner or operator will comply with the requirements for Group 1 wastewater streams in subpart G for that stream. This proposed additional compliance option is designed to maintain the applicability and stringency of existing control requirements for the Benzene Waste NESHAP while providing an opportunity to reduce the complexity of the compliance demonstration by reducing the number of separate rules that apply to the equipment. The number of streams that are subject to control under the Benzene Waste NESHAP would not be changed by electing to use this option. The EPA wishes to emphasize that this additional compliance option would not supersede any existing, still-effective agreements to take mitigating actions that were granted in exchange for additional compliance time with the Benzene Waste NESHAP. These agreements would not be altered by this proposed amendment to this rule.

2. Resource Conservation and Recovery Act (RCRA)

In developing the April 1994 rule, EPA attempted to address the problem of overlapping requirements by specifying which provisions apply for each of the known cases of overlapping rules. These instructions on overlapping requirements were provided in § 63.110 of subpart G and in § 63.160 of subpart H. Since issuance of the rule, EPA has learned that there is another broad category of overlapping RCRA requirements that was not addressed in the April 1994 rule. In today's amendments, EPA is proposing provisions to allow use of certain RCRA-required monitoring to satisfy corresponding requirements in subpart G and H. These proposed provisions would be added to these subparts as § 63.110(h) and § 63.172(n).

The April 1994 rule addressed the known overlaps of control requirements between the RCRA rules in 40 CFR parts 260 through 272 and the wastewater control requirements of this rule. Due to an oversight, the April 1994 rule did not specify the applicable requirements in cases where the same control device (e.g., incinerator or adsorber) is subject to a RCRA rule and would be used to comply with requirements for non-wastewater provisions of this rule. Presently, the April 1994 rule would require the owner or operator to comply with the applicable monitoring, recordkeeping, and reporting provisions of each rule. Compliance with both rules' monitoring, recordkeeping, and reporting requirements would significantly increase the cost of compliance demonstrations without providing a corresponding environmental benefit. To reduce this unnecessary burden, the EPA is proposing to allow an owner or operator to elect to use the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 260 through 272 for this rule.

The EPA considers this proposed consolidation of overlapping monitoring, recordkeeping, and reporting requirements to be appropriate

because the RCRA air rules and the HON have the same objective and monitor similar operational characteristics of control devices. In general, the RCRA requirements tend to require more frequent monitoring and retention of more detailed information. Therefore, it is possible to use the RCRA data and reports to demonstrate compliance with the provisions of this rule.

Today's amendments also propose to accept demonstrations of compliance with RCRA requirements as demonstration of compliance with the process vent, transfer operations, storage vessels, and equipment leak provisions of the HON. The wastewater provisions in subpart G presently exempt hazardous waste incinerators permitted under 40 CFR part 270 and boilers and industrial furnaces permitted under 40 CFR part 266 from performance test requirements of § 63.139. These RCRA air rules were judged to be at least as stringent in controlling air emissions as this rule so that a second compliance demonstration was not necessary. This judgment is applicable to the control requirements for the non-wastewater provisions of this rule. Therefore, it is proposed to add these rules to the list of controls exempted from performance tests or other compliance demonstration requirements in § 63.116(b), § 63.128(c), and § 63.139(d)(4) and to add provisions to § 63.120(d) to list controls exempt from compliance demonstration requirements.

G. Proposed Changes to Subparts H and I

In addition to the applicable changes discussed in earlier sections of this preamble, the proposed changes to subpart H consist of: (1) clarification of the terms ''repaired'' and ''first attempt at repair'' and clarification of the followup monitoring requirements for connectors and valves; (2) correction of § 63.180(b)(4) to allow use of calibration gases other than methane; and (3) miscellaneous corrections and clarifications to the wording of a few paragraphs.

1. Clarification of Definitions

The EPA is proposing to revise the definitions of the terms ''repaired'' and ''first attempt at repair.'' These proposed changes are intended to eliminate the confusion that presently exists regarding what monitoring is required after leaks are repaired. The definition of ''repaired'' presently states that the equipment is adjusted or otherwise altered to eliminate a leak. The EPA has received inquiries whether this definition implies that there must be proof by monitoring data that the leak was repaired. These questions have been raised because other sections of subpart H impose such a requirement. Because of inquiries such as these, EPA reviewed subpart H and determined that the confusion regarding the requirement was due in part to the lack of specificity in the definition of the terms ''repaired'' and ''first attempt at repair.'' The proposed amendments to subpart H would revise these definitions to explicitly include reference to verification monitoring according to the procedures in § 63.180(b) and (c), as appropriate. From this review, it was also determined that some of the confusion was arising from lack of specific statement in applicable sections of the rule that verification monitoring was required. The proposed changes to subpart H would correct this problem.

2. Followup Monitoring

The EPA has received inquiries regarding the requirements for monitoring within 3 months after repair of a leaking valve and the relationship between this monitoring and the periodic monitoring required by the standard. The proposed amendments would add provisions to § 63.168(f)(3) to clarify that (1) monitoring is conducted according to the procedures specified in § 63.180 (b) and (c) and (2) the periodic monitoring may be used to satisfy this requirement if the timing of this monitoring coincides with the timing specified for the followup monitoring. The new provisions that would be added to § 63.168(f)(3) would also specify how to consider the results of this monitoring in the calculation of percent leaking valves should a leak be detected. These proposed changes would revise the rule to correct oversights in the original drafting and to ensure that the rule reflects EPA's intent.

The EPA has also received inquiries regarding whether subpart H requires followup monitoring of connectors found to be leaking. These questions have arisen due to a lack of clarity in § 63.174 (c)(1)(i) and (c)(1)(ii) that these provisions apply to connectors that have been opened. The proposed change to the rule would clarify this point.

3. Calibration Gases Other Than Methane

The EPA is proposing to revise § 63.180(b)(4) to allow use of calibration gases other than methane. Since April 1994, some industry representatives and equipment vendors have expressed concern to EPA that present restriction to use methane as the calibration gas precludes use of the procedures in Method 21 which permit calibration with another reference compound. As discussed in the April 22, 1994 Federal Register, EPA intended to allow the use of reference compounds other than methane in the calibration gases. However, due to a drafting error § 63.180(b)(4)(ii) was not modified to allow this flexibility. The proposed amendments to this section of the rule would revise this paragraph to allow the use of other compounds when the instrument does not respond to methane or does not meet the performance specifications of § 63.180(b)(2)(i). The EPA considered whether this revision should include a requirement to adjust the instrument readings to a methane base in order to have the readings on the same basis as instruments calibrated using methane. The proposed provisions do not require such an adjustment for the same reasons given in the April 22, 1994 notice for removal of the 1992 proposed rule's requirement of adjustment for response factors (59 FR 19447–19448).

Changes to Subpart I

The proposed changes to subpart I consist of corrections of several cross-referencing errors and revisions to the general recordkeeping and reporting requirements in § 63.190(f). The proposed amendments to § 63.190(f) are the same as the revisions to § 63.103(c) discussed in section III. E. 5 of this preamble.

IV. Basis for Proposed Changes to Wastewater Provisions

A. General Comments on Changes to Wastewater Provisions

Today the Agency is proposing amendments to the wastewater provisions in subpart G that are designed to clarify provisions of the rule that have been misunderstood by some in the SOCMI industry. If promulgated, the proposed clarifying amendments would not change the basic control requirements, predicted emission reductions, or cost of the rule. A summary of the amendments is provided in the following paragraphs.

Four sections have been rewritten entirely in today's amendments to improve clarity and to incorporate the new ''point of determination'' concept discussed in section IV.D of this preamble. The four sections address: criteria for determining the Group 1 and Group 2 wastewater streams (§ 63.132); performance standards for process wastewater (§ 63.138); procedures for determining Group 1 and Group 2 wastewater streams (§ 63.144); and procedures for demonstrating

compliance (§ 63.145). Also, requirements allowing the use of floating flexible membrane covers on surface impoundments have been added to § 63.134, and a section addressing in-process equipment (§ 63.149) has been added.

Minor changes are proposed to the sections governing waste management units, control devices, delay of repair of waste management units, inspections and monitoring, recordkeeping, and reporting.

As a result, today's wastewater provisions are being proposed in §§ 63.132 through 63.147, in § 63.149, in tables 8 through 20, in tables 34 through 37, and in figure 1 of appendix A to subpart G. Deletions include § 63.131 (reserved since information became unnecessary with amendments) and the figures and tables 14a, 14b, and 16 to subpart G. The proposed amendments would add a new table 15, which replaces tables 15a and 15b of the April 1994 rule, and tables 35 through 37 and figure 1, which provides a key to the terms in the wastewater equations. Fraction measured values (Fm) in Table 34 were corrected for four compounds: trichlorophenol, Fm=0.11; chlorobenzene, Fm=1.00; isophorone, Fm=0.51; and 1,1,2-trichloroethane, Fm=1.00. In addition, tables 11, 12, 17, and 18 were revised.

B. Wastewater Definitions

1. Summary of Significant Changes

Significant changes proposed are: revisions to the ''wastewater'' definition; replacement of the ''point of generation'' (POG) definition with ''point of determination'' (POD) definition; addition of ''closed'' and ''open biological treatment process'' definitions; addition of the ''enhanced biological treatment system'' definition; revisions to the ''individual drain system'' definition; and deletion of definitions for ''total volatile organic hazardous air pollutant (VOHAP)'', ''volatile organic concentration'', and ''VOHAP concentration.''

Changes to some of the definitions, especially ''wastewater'', ''recovery device'', and ''point of generation'', were necessary due to circularity and a lack of specificity in the definitions. The definitions were revised to clarify EPA's intent concerning which organic HAP-containing waters are in-process fluids regulated by the provisions in § 63.149 and which are wastewater and regulated by the provisions in § 63.132 through § 63.147.

2. Revised Wastewater Definition

The most significant change proposed today to the ''wastewater'' definition is the addition of the concept of ''discard.'' The discard concept is fundamental in distinguishing which fluids exiting the cmpu are subject to the HON wastewater provisions in §§ 63.132 through 63.147. Together with the point of determination and in-process equipment concepts, the revised definition of wastewater makes decision-making for facilities and regulatory authorities more straightforward, and the rule more easily implemented. Since fluids in the in-process equipment are also controlled by the HON, emission reductions will not be affected by this proposed change.

3. Replaced Point of Generation With Point of Determination

Today's proposal would change the definition for ''point of generation'' in two ways—one way a conceptual change and the other a change in terminology. ''Point of generation'' was changed to ''point of determination'' to distinguish it from the term, ''point of generation'' as used in the Benzene Waste NESHAP. ''Point of generation'' was defined in the April 1994 rule as ''the location where process wastewater exits the process unit equipment,'' (i.e. exits the last recovery device). In today's proposal, it has been replaced by ''point of determination'', which is defined as ''each point where the process wastewater exits the chemical manufacturing process unit.'' The need for and significance of this change is discussed in more detail in section IV.D. of this preamble.

4. Recovery Device

The proposed amendments include a revised definition of ''recovery device.'' The proposed definition of ''recovery device'' differs from the existing definition in order to reflect the revised approach to the definition of ''wastewater'' and to reflect the fact that deviations from normal operations do occur.

Under the revised approach for defining wastewater, a stream does not become wastewater until it exits the last recovery device. As a recovery device had been defined as an item of equipment used to recover chemicals for fuel value, use, reuse, or ''sale'', it would seem impossible—by definition—to sell a wastewater stream or residual extracted from a wastewater stream. In developing the revised approach for wastewater, it became apparent that using the term ''sale'' without any qualification in the definition of ''recovery device'' left a potential loophole. A bad actor could ''sell'' a Group 1 stream to an affiliate for a negligible amount, claim that it was a sale so that the stream had not yet exited the last recovery device (so it was not wastewater), and the affiliate could simply dispose of the stream or residual without treating it in accordance with the HON provisions (and incurring the costs of such treatment). The additional language is intended to remove the possibility of such sham transactions by limiting the concept of sales to sales for the same general purposes for which chemicals may be recovered and utilized within the HON facility (i.e.,use, reuse, or burning as fuel). The EPA believes that such language is broad enough to encompass any sale that is not a sham since ''use'' and ''reuse'' are very general concepts. The definition also differs from the existing definition in that the word ''normally'' now modifies the phrase ''used for the purpose of recovering ....'' This change was made to recognize that occasional exceptions to normal usage can and will arise.

5. Added Definitions for Closed Biological Treatment Process, Open Biological Treatment Process, and Enhanced Biological Unit

Definitions for closed biological treatment process, open biological treatment process, and enhanced biological treatment system would be added to the definitions in subpart G. The new definitions are necessary to make distinctions among biological treatment processes which allow the incorporation of more flexible and less burdensome compliance demonstrations for some facilities. This is discussed in more detail in the discussion of changes to § 63.145 in section IV.F. of this preamble.

6. Modified Individual Drain System Definition

The definition for individual drain system would be modified to clarify three key concepts and incorporate minor wording changes. The definition in today's proposal would clarify that only stationary systems are included in the definition; that individual drain systems are used to convey residuals as well as wastewater streams; and that the individual drain system does not include in-process equipment as described in § 63.149.

7. Deletion of Total VOHAP, VO Concentration, and VOHAP Concentration Definitions

The EPA proposes to delete the definitions for ''total VOHAP'', ''VO concentration'', and ''VOHAP concentration.'' As discussed in section IV.F. of this preamble, these terms would no longer be used in the rule; therefore, the definitions would not be needed.

C. Changes to § 63.132

In the April 1994 rule and in today's proposed changes to the rule, § 63.132 provides the instructions on how to determine if a process wastewater stream requires control and the general outline of requirements for process wastewater streams. The general approach for determining which wastewater streams are Group 1 or Group 2 would not change. Determination of whether a wastewater stream is Group 1 or Group 2 would still be based on the same concentration and flow rate criteria as the current rule. Control requirements for Group 1 wastewater streams still require that HAP emissions be controlled until the HAPs are either removed from the wastewater or destroyed. Today's proposal reorganizes § 63.132 to eliminate redundant sections, clarify requirements, and change the order of the provisions into a more reader friendly format. Other proposed changes include use of the point of determination concept instead of the point of generation concept (discussed in IV.D. of this preamble) and the addition of language prohibiting the discard of certain organic material into water or wastewater.

Language prohibiting the discard of certain organic material into water or wastewater would be added as § 63.132(f). Specifically, liquid or solid organic materials containing greater than 10,000 parts per million of Table 9 compounds may not be discarded into water or wastewater unless the receiving stream is managed and treated as a Group 1 wastewater stream. The prohibition would exclude equipment leaks; activities included in the start-up/shutdown/malfunction plan, including maintenance wastewater; spills; and samples. This paragraph would be added to eliminate the potential for dumping of high concentration organic streams, such as off-specification product, into the sewer. The EPA seeks comment on the appropriate size of a sample.

D. Basis of Determining Group Status of a Wastewater Stream: Change From Point of Generation to Point of Determination

The EPA is proposing to revise the rule to base the determination of applicability of control requirements to a wastewater stream on its characteristics at the point where the wastewater stream exits the last recovery device instead of at the point of generation (POG). The new location for determining the characteristics of a wastewater stream is being called the point of determination (POD) to distinguish it from the POG concept used in other air rules for waste and wastewater such as the Benzene Waste NESHAP. As discussed earlier in the OVERVIEW OF CHANGES TO THE RULE, this proposed revision is one of several changes being made to address problems with drafting clarity and structure of the wastewater provisions. The proposed concept of POD along with the revised definitions for key wastewater terms and the provisions for in-process equipment subject to the provisions of § 63.149 is consistent with the emission and cost estimates used to support the April 1994 rule.

1. Point of Generation Concept in April 1994 Rule

In the April 1994 rule, the term POG is defined as the point where the process wastewater exits the process unit equipment. The EPA's intent with the POG approach was to identify wastewater streams for control prior to opportunities for losses due to emissions to the atmosphere, prior to dilution with other wastewater streams, and prior to partial treatment of the wastewater stream. If dilution or partial treatment prior to a control determination were allowed, some wastewater streams that would have required control based on the concentration criteria would not meet the requirement of the rule for control and would therefore not be treated.

A fundamental premise of the POG concept is that a clear distinction can be made between process equipment and waste management units. In development of the April 1994 rule, EPA emphasized that the distinction was based on whether the material and the unit in which it is managed is an integral part of the production process. The EPA has learned since 1994 that industry has numerous interpretations of the concept of ''integral to the process'' and hence the POG concept. Interpretations vary because evaluation of what is integral to the process takes into consideration economic and process design factors as well as knowledge of the process and the industry. Because processes and configurations of equipment in facilities subject to this rule vary widely, it is difficult to develop a set of criteria that can be used to make clear distinctions between process and waste management equipment. The combination of this problem with the ambiguities and the lack of specificity in the other key wastewater definitions (e.g., wastewater) has resulted in a rule that may be misinterpreted. It is important that the rule be clear and unambiguous so that all parties interpret its requirements consistently.

Because of issues raised since promulgation of the April 1994 rule concerning EPA's intent and the difficulty of making the POG determination, the EPA has reevaluated the POG concept. As part of this reevaluation, EPA reviewed the data that were used to develop the emission and cost estimates for the April 1994 rule. It was determined from this review that the industry responses in 1990 to the section 114 wastewater questionnaires did not reflect a consistent understanding of what EPA considered to be wastewater and what EPA meant by the concept of POG. In many cases, the respondents provided information for a location that was after the point that EPA considered to be the POG. In a few cases, it was not possible to determine from the process description and the description of wastewater streams whether the information was or was not after the POG. Thus, because of the lack of consistency in the responses, it is not possible to be certain that the emission and cost analyses used in development of the April 1994 rule reflected the POG concept in the rule language. Moreover, it is now apparent that the POG approach is inherently foreign to the way facility operators view their processes and it is unlikely that this concept would be generally accepted and understood by the regulated community. Because of these practical problems, the EPA concluded that it was appropriate to develop a new approach for the initial point of evaluation of a wastewater stream. The new approach that would replace the POG is called the point of determination (POD).

2. Point of Determination Concept in Today's Proposal

The EPA's intent in developing the POD approach is to have a decision criterion that is replicable and unequivocally specifies the location for evaluation of a wastewater stream for

the purposes of control. The POD therefore encompasses each point where process wastewater exits the last recovery device. This proposed definition of POD would allow a facility to recover chemicals for fuel value, use, reuse or for sale for fuel value, use, or reuse. As with the POG, under the POD approach owners/operators would not be allowed to mix streams together for the purpose of escaping compliance by the diluting of wastewater streams to a level below the 1000 ppmw at 10 L/min or greater flowrate or the 10,000 ppmw at any flowrate level. Under the POD approach, process units conveying process fluids in the chemical manufacturing process unit are subject to the requirements established in Table 35. Table 35 is consistent with the suppression requirement for a wastewater stream requiring control. Again, the EPA's intent is to allow process fluids that have recovery potential to be sent to recovery devices; however, these fluids are required to be managed so as to minimize the potential for losses due to emissions to the atmosphere. In addition, making the POD the location after the last recovery unit would eliminate the need for the recycle option allowed under the current wastewater provisions.

The EPA believes the POD approach would allow more flexibility than currently provided in the rule with regard to materials recovery while eliminating confusion over the initial point of evaluation for a wastewater stream for the purposes of control and, at the same time, maintain the suppression requirements for more concentrated streams. The POD approach would also make the wastewater provisions consistent with the data collected for development of the rule and with the other provisions in the rule concerning definition of process. There are no expected changes in emission reductions or costs associated with this revision to the rule.

The EPA considers the proposed POD approach to provide a workable alternative to the POG approach because the HON addresses the other emission points in the cmpu. The EPA does not believe that the POD approach would be appropriate for other rules that are not as comprehensive in the coverage of emission points. The POD concept would not be appropriate in cases where it is known that the other emission points would not be subject to any control requirements.

E. Changes to Waste Management Unit Provisions

1. Clarifications to Process Wastewater Provisions

The proposed clarifications to the text concern the mixing of wastewater in tanks, methods to insure a water seal is maintained, use of a flexible shield restricting wind motion across the space between the discharging pipe and the receiving drain, and venting from junction boxes. Text was added to explain that alternative methods (other than the example given in the rule) could be used to demonstrate that water seals are maintained properly. Clarification was added to the requirements concerning the flexible shield to describe more fully where the shield should be located. The proposed clarification for the venting of junction boxes was written to explain the difference between venting to the atmosphere of junction boxes with gravity wastewater flow and venting to the atmosphere of junction boxes with wastewater pumps. Under today's proposed clarification to the provisions, water sealed junction boxes with gravity flow or systems that operate with only slight fluctuations in the liquid level are allowed to vent to the atmosphere through a specified size of vent pipe. Junction boxes with pumps that turn on and off, allowing the junction box to alternately empty and fill, are not allowed to vent to the atmosphere due to the vapor headspace turnover that occurs. Clarifications were made to the process wastewater provisions for wastewater tanks to express more fully the EPA's intent to suppress emissions from these systems.

2. Floating Membrane Covers

Since April 1994 the EPA has received inquires as to the reason floating membrane covers were not allowed under the wastewater provisions of the HON. The EPA has allowed the use of floating membrane covers in other rules. The EPA considered this inquiry and decided that floating membrane covers would be acceptable for suppressing emissions from surface impoundments. Provisions would be added to the surface impoundment requirements derived from the standards in Subpart QQ of 40 CFR part 63 for floating membrane covers. The provisions provide the requirements for the material used for construction of the floating membrane cover and for the installation of the cover.

3. Individual Drain System Suppression Requirements

Since promulgation of the April 1994 rule, industry has raised concerns that the individual drain system suppression requirements would lead to vapor lock in wastewater collection systems. A vapor lock occurs in a wastewater system when the wastewater attempts to flow into or out of an area that is sealed and the pressure in the system cannot equalize, thereby restricting the flow of the wastewater. The EPA's intent is to suppress emissions from the collection system and not to seal the system such that gravity flow systems will be inoperative. The concern over potential for vapor lock to occur in the individual drain system would be addressed by removing the requirement to gasket and latch covers or openings.

In today's proposed amendments, the requirement to seal, gasket, or latch covers or openings in the individual drain system has been deleted. The proposed amended text would now read that openings shall be equipped with a tight fitting solid cover (i.e., no visible gaps, cracks, or holes). The EPA believes that this requirement would minimize emissions from openings in wastewater treatment systems and can be met without creating a vapor lock. The EPA recognizes that normally there will be a ''visible'' point of juncture between the cover and the opening, such as where a manhole cover contacts the manhole frame. The point of juncture generally is a thin, visible line or crack running around the circumference of the cover. These points of juncture are not prohibited. The intent is to prohibit gaps or openings that allow air flow into or out of the collection system. A tightly fitting solid cover will contact the manhole frame in such a way that there is a surface (cover) to surface (frame) contact. Certain minor surface irregularities, such as those associated with a manhole cover manufactured by casting, are acceptable. A gap between surfaces that are not intended for sealing is acceptable. For example, a gap between the outer rim of a manhole cover and the inner rim of the manhole is acceptable, if the actual sealing surface is between the bottom of the cover and the top of the manhole. Plugged or capped holes (such as plugged or capped holes to insert a tool for removal of a cover) are acceptable. Removal of the plugs or caps is unacceptable, except for the purpose of conducting those activities for which the rule allows the cover to be opened and provided the plug or cap is replaced upon completion of the activity. Warped covers that create a gap for air passage

are unacceptable. The EPA believes that relaxing the requirements for tightly fitting solid covers for individual drain systems will suppress emissions effectively while also allowing small changes in pressure to occur in the system and, thereby, eliminating the problem from vapor lock.

4. Repair Time Allowed for Waste Management Units

The April 1994 rule provides that repair can be delayed for up to 15 or 45 days depending on the type of waste management unit. The EPA has received requests that 45 days be allowed for repair of all types of waste management units. This change was requested in order to simplify implementation of the rule. The EPA evaluated the need for additional time for repairs for some types of units and determined that the April 1994 rule provisions did not address situations where parts could not be obtained in the specified time period. In addition, due to an oversight, § 63.140 did not allow delay of repair when the waste management unit was taken out of service. As a result, EPA is proposing revisions to § 63.140 to allow delay of repair when waste management units are taken out of service and when additional time is necessary to obtain spare parts. The proposed revisions do not revise the time provided for repair of some waste management units from 15 days to 45 days.

F. Changes to §§ 63.138, 63.144, and 63.145

1. General

Three sections of today's proposed rule, §§ 63.138, 63.144, and 63.145, were rewritten to improve clarity, to incorporate the point of determination concept, and to add flexibility in the compliance demonstration for facilities using biological treatment processes to achieve the control requirements. Revisions to § 63.144 in the April 1994 rule contained in today's proposal are reorganization for clarity; addition of methods and an alternative validation procedure; deletion of the term VOHAP from text; and deletion of simple equations that are unnecessary. These three sections are discussed together because the changes made to one of them most likely appears in all three of the sections. A specific change will be discussed where it first appears or has the most impact.

2. Changes to § 63.138, Process Wastewater Provisions—Performance Standards for Treatment Processes Managing Group 1 Wastewater Streams and/or Residuals Removed From Group 1 Wastewater Streams

Section 63.138 contains provisions for control of Group 1 wastewater streams and residuals from Group 1 wastewater streams. The most significant changes proposed to § 63.138 are: reorganization for clarity; deletion of recycling and process unit alternative as control options; technical corrections to the design steam stripper specifications and removal of unnecessary specification of steam quality; clarification of compliance demonstration procedures that may be used for biological treatment processes; clarification that treatment in series is allowed; consolidation of provisions for the 1 megagram source-wide exemption into § 63.138; and clarification of when design evaluations may be used to demonstrate compliance instead of performance tests.

3. Deletion of Recycling and Process Unit Alternative Options From § 63.138

The recycling and process unit alternative options (April 1994 rule paragraphs (b)(1)(i), (c)(1)(i), (d)(2)(ii), and (h)(1), and paragraph (d), respectively) would be deleted from today's proposed rule. Both options would become unnecessary under the POD concept proposed to replace the POG concept. The recycling option allowed an owner or operator to achieve compliance by recycling a process stream to a process unit. The recycling provisions in paragraph (f) of the April 1994 rule require that the wastewater or residual not be exposed to the atmosphere and that waste management units in contact with the wastewater streams or residual comply with control and inspection and monitoring requirements. With the proposed point of determination concept, the recycling option would become redundant because as long as a fluid stays in the process, it would not be a wastewater subject to the provisions of § 63.138; instead, it would be subject to the other provisions of the rule such as storage vessels or § 63.149.

4. Clarification That Treatment in Series Is Allowed

Although it is not stated clearly, the April 1994 rule intended that more than one treatment process could be used to comply with the rule. Today's proposed amendments would provide provisions for treatment in series in §§ 63.138 and 63.145 and would clarify EPA's intent. Treatment in series may be used whether or not treatment processes are connected by hard piping. However, inlet and outlet mass flow rate determination for compliance demonstration differ, depending on whether hard piping is used to connect treatment processes and whether a biological treatment process is part of the series.

5. Consolidation of Provisions for the One Megagram Source-Wide Exemption Into § 63.138

The provisions for the 1 megagram source-wide option would be clarified and would be consolidated from §§ 63.138 and 63.144 in the April 1994 rule into § 63.138 in today's proposed amendments. This would make the provisions easier to find and understand for the reader.

6. Alternative Methods to Method 305 used in § 63.144

The EPA is proposing to revise the rule to allow use of alternative methods for Group 1 or Group 2 determinations for process wastewater streams in lieu of Method 305. The EPA specifically reviewed Methods 624, 625, 1624, and 1625 and has determined that these methods may be used with certain additional requirements. These requirements are specified in § 63.144 (b) of the proposed amendments. Other methods may be used if they are validated by the Method 301 validation procedure as discussed below. Because the alternative methods determine actual concentrations of the organic compounds, the fraction measured (Fm) values listed in table 34 can be used to adjust the alternative method measurements to a value representative of what Method 305 would provide.

Method 305 was developed by EPA to identify streams requiring control for air emissions; therefore, the method was developed specifically to retain and measure organic compounds of concern from an air emission perspective. The Office of Water methods (Methods 624, 625, 1624, and 1625) were developed for different purposes and would not necessarily address air concerns as does Method 305. The EPA used four criteria of concern from the air perspective to evaluate the methods. These four criteria were used to ensure that the alternative method retained and quantified the organic compounds of concern, generally referred to as target compounds. The first criterion is that the method provide a sampling approach that would minimize the loss of volatiles from the sample while maintaining sample integrity. The second criterion is that the method

detect the organic compounds of concern. Third, the method must have adequate up-front quality assurance and quality control to ensure valid data. Finally, the alternative method must correct for analyte preparation and analysis bias. That is, the method adjusts to the actual concentration of the compound in the sample.

The EPA has compared Methods 624, 625, 1624, and 1625 against the four criteria listed above and proposes to allow these methods to be used as alternative methods to Method 305 with some additional requirements as specified in the proposed revised rule. The EPA is proposing to allow the use of alternative methods based on the belief that those parties using this alternative approach are following the procedures specified in the alternative method and are not using some modified version of the method. One of the additional requirements proposed consists of employing a sampling and collection procedure that minimizes the volatilization of organics. For Method 625, EPA proposes to require corrections to the compounds for which the analysis is being conducted. For example, Method 624 requires initial calibration of the analytical system with the target compounds. The four methods also specify the list of analytes for which the method can be used. Additional compounds may be added to the four reviewed methods' analyte lists by using the Office of Water's Alternative Test Procedure (40 CFR 136.4 and 136.5).

Additional methods other than those previously mentioned also may be used in lieu of Method 305 if a procedure that minimizes loss of volatile organic compounds during sampling and collection is employed and if the method is validated in accordance with sections 5.1 or 5.3, and the corresponding calculations in sections 6.1 or 6.3, of Method 301. Other EPA methods may be validated using Appendix D of part 63, ''Alternative Validation Procedure for EPA Waste Methods'', provided that a procedure that minimizes loss of volatile organic compounds during sampling and collection is also be employed.

7. Deletion of Term ''Volatile Organic Hazardous Air Pollutant''

The EPA found that many in the regulated community found the terminology ''volatile organic hazardous air pollutant'' (VOHAP) confusing. The term VOHAP concentration is used in the April 1994 rule to mean the weight concentration of Table 9 HAP's as determined by Method 305. This meant when a VOHAP concentration was required, the results from methods other than Method 305 had to be adjusted by the compound-specific fraction measured factor (Fm) listed in table 34 of subpart G to convert actual concentration to Method 305 concentration. When the April 1994 rule specified a HAP concentration, results from Method 305 were required to be adjusted by the Fm factors to correct to the actual concentration while results from other methods would be used as measured (without Fm adjustment).

With today's proposed amendments, §§ 63.144 and 63.145 of the rule would explicitly state when Fm adjustments are appropriate rather than relying on using the term VOHAP to convey EPA's intent. The proposed amendments would also remove the term VOHAP. Also under the proposed amendments, it would be clarified in § 63.144 that annual average concentration may be expressed either as adjusted by the Fm factors or with no adjustment.

8. Changes to § 63.145, Process Wastewater—Test Methods and Procedures to Determine Compliance

Section 63.145 contains the provisions that explain how to demonstrate compliance with the performance standards in § 63.138. Several significant changes are proposed to this section. It was rewritten to improve drafting quality, provide clear statements of EPA's intent, and correct errors.

9. Reorganization of § 63.145

In today's proposal, § 63.145 is reorganized to clarify requirements and provide the reader with an understanding of which paragraphs to use for demonstrating compliance with the compliance options in § 63.138. Three clarifications are of particular note: (1) ''Representative operating conditions'' for treatment processes and control devices are specified in paragraphs (a)(3) and (a)(4) of § 63.145; (2) conditions under which a performance test or design evaluation is allowed or under which neither is required are specified in paragraphs (a)(1) and (a)(2); and, (3) clarification of when Fm adjustments are allowed are included throughout the section. These proposed clarifications were in the April 1994 rule but may have been unclear or placed in other sections, causing readers difficulty in determining how the sections fit together. The reorganized section would also make provisions for measuring concentration and flow rate consistent among paragraphs. EPA believes these changes in rule language will improve clarity and will improve reader comprehension.

10. Demonstrating Compliance for Biological Treatment Processes

Concerns have been raised that the requirements concerning demonstrating compliance for biological treatment processes are confusing and the requirement for site-specific fraction biodegraded (Fbio) determinations is unnecessarily burdensome. To respond to these concerns, the EPA reevaluated the performance determination requirements for biological treatment processes and found that adjustments could be made to the requirements consistent with the intent of the rule. The EPA's intent was to allow the use of biological treatment units that achieved the required mass removal of table 9 compounds through biodegradation and not through emissions to the atmosphere. Today's proposed amendments would add paragraph (h) which describes how to determine the site-specific fraction of Table 8 and/or Table 9 compounds biodegradated (Fbio); clarify that biological treatment processes must use one of the required mass removal options to comply with the rule; add flexibility in demonstrating compliance for biological treatment processes; and add provisions that allow a subset of the Table 8 or Table 9 compounds to be used to demonstrate compliance.

Paragraph (h)—how to determine Fbio—is added to make the provisions easier to find than in the April 1994 rule. In addition, § 63.145(h), together with appendix C to part 63, provide more flexibility to the owner or operator to demonstrate compliance for biological treatment processes. The April 1994 rule required owners and operators using biological treatment processes to demonstrate compliance using appendix C to part 63 to determine Fbio. Today's proposal recognizes that for some biological treatment processes, a less rigorous determination of Fbio is sufficient to demonstrate compliance.

When a biological treatment process is used, one of the required mass removal options, § 63.138(f) or (g), must be chosen as the compliance option. This was EPA's intent in the April 1994 rule but it was not stated clearly. The provisions that may be used to demonstrate compliance depend on whether the biological treatment process is open or closed. In each case, the proposed rule specifies which compliance demonstration provisions may be used.

For open biological treatment processes, volatilization is an important

concern. Therefore, to demonstrate compliance, the owner or operator must determine the mass of the Table 8 or Table 9 compounds that is removed due to biodegradation rather than volatilization. If the open biological treatment process is an enhanced biological treatment process, the source would have more flexibility in demonstrating compliance. To incorporate this flexibility, EPA looked at the Table 9 compounds and determined which are more readily biodegraded and which are more likely to volatilize before biodegradation can occur in an enhanced biological treatment process.

11. Performance Requirements for Open Biological Treatment Processes

Because of the reevaluation of the Table 9 compounds, the EPA was able to separate the compounds on Table 9 into three lists which appear in table 36. These lists would be used together with other provisions to specify how the source may demonstrate compliance. Table 36 may only be used for wastewater streams treated in an enhanced biological treatment system as defined by the proposed revisions to the rule.

The development of the three lists in table 36 was based on the individual compound's fraction emitted (Fe), fraction removed in a steam stripper (Fr), and fraction biodegraded in a biological treatment unit (Fbio). The values for Fe and Fr that were evaluated were based on analysis performed for the April 1994 rule. Documentation of this analysis is available in the docket A–90–23. The Fbio values used to compile the three lists in table 36 were based on default values for an enhanced biological treatment unit from the EPA Water8 model. List 1 consists of Table 9 compounds that have Fr values approximately equal to or less than their Fbio values, and Fe values that are in the middle to lower volatility range. List 3 consists of Table 9 compounds that have Fr values of 0.99, Fbio values that are considerably lower than 0.99, and Fe values in the higher volatility range. The Table 9 compounds that were left after this evaluation became List 2.

A performance demonstration would not be required for enhanced biological treatment systems that receive wastewater streams that require control and that contain only List 1 compounds on table 36. An example would be an activated sludge unit that meets the proposed enhanced biological treatment system definition and treats Group 1 wastewater streams that contain only methanol and nitrobenzene (List 1 compounds). A compliance demonstration would not be required because the only Table 9 compounds requiring control appear on List 1. For enhanced biological treatment systems treating wastewater containing compounds on Lists 1, 2, and/or 3, a performance demonstration is required.

Today's proposal offers several techniques for demonstrating compliance for an open biological treatment unit meeting the proposed definition of an enhanced biological treatment system. The demonstration is performed by estimating the Fbio for the system using the first order biodegradation constant (K1) and the forms in appendix C to part 63. The owner/operator may use any of the procedures specified in 40 CFR part 63, appendix C to calculate the site-specific K1s for compounds on Lists 1 and/or 2. The owner/operator may elect not to calculate site-specific biodegradation rate constants but instead to calculate Fbio for the List 1 compounds using the defaults for K1s in table 37 and to follow the procedure explained in Form IIA of appendix C. For compounds on List 3, the owner/operator is allowed to use any of the procedures specified in 40 CFR part 63, appendix C, except the batch tests procedure, to calculate the site-specific K1. Biological treatment units not meeting the definition of an enhanced biological treatment system are allowed to determine the Fbio using the site-specific K1 values determined by any of the procedures in appendix C to part 63 except the proposed batch tests procedure.

The EPA believes that today's proposed revisions to the biological treatment option adds additional flexibility without sacrificing reduction of emissions. By separating the Table 9 compounds into 3 lists and allowing different performance requirements depending on the properties of the compounds on the lists, additional options have been made available to the owner/operator. The EPA maintained the original intent of the rule by limiting the additional options to biological units meeting the definition for enhanced biological treatment systems.

The flexibility allowed by not requiring that the site-specific fraction biodegraded be determined for all Table 8 or Table 9 compounds in the wastewater stream is predicated on the underlying assumption that the wastewater is treated in an enhanced biological treatment system. The definition for enhanced biological treatment system is proposed in today's notice. The definition is based on extensive discussions with individuals knowledgeable in the area of biological treatment. Well-designed, operated, and maintained activated sludge systems meet the definition of enhanced biological treatment systems.

12. Equations in § 63.145

Many of the equations in § 63.145 would be revised to make mathematical corrections or to make the equations consistent with the rest of the rule. The equations for control devices performance tests—paragraph (i) in today's proposal—are proposed to be based on the equation in the process vents section of the rule rather than the equations in the April 1994 rule. The terms in the equations were changed to make them consistent. Figure 1 in appendix A to subpart G lists the new terms.

13. Compounds Not Required To Be Considered in Performance Tests

Today's proposal would add § 63.145(a)(6) which specifies when compounds are not required to be included in a performance test. These provisions were added because EPA recognizes that not all Table 8 or Table 9 compounds are present in a wastewater stream; and not all compounds need to be measured to demonstrate compliance, i.e., measuring a predominant compound may be enough to show the mass removal necessary to achieve compliance. These provisions would also provide that compounds present at concentrations less than 1 ppmw at the POD or compounds present at the POD at concentrations less than the lower detection limit where the lower detection limit is greater than 1 ppmw may be excluded from the performance test. This provision was added to avoid imposing an unnecessary analytical burden.

G. Off-Site Treatment

Today's proposed amendments include provisions to allow owners and operators of HON sources to transfer Group 1 wastewater streams or residuals off-site for treatment provided the owner/operator obtains from the transferee a copy of a written statement submitted by the transferee to EPA certifying that the transferee will manage and treat the wastewater streams or residuals in accordance with the HON's provisions. These new provisions replace the existing provisions in § 63.132(j) that required that the owner/operator ensure that the transferee complies with the suppression and treatment requirements of the rule. The existing provisions in § 63.132(j) are revised to provide a means to allow transfers of treatment responsibility without imposing liability

for actions of another party on the owner/operator of the HON source.

The new provisions allowing for off-site or on-site third party treatment require the owner/operator transferring the wastewater stream or residual to comply with the suppression requirements specified in §§ 63.133 through 63.137 of this subpart for each waste management unit that receives or manages a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream prior to shipment or transport. The owner or operator may not transfer the wastewater stream or residual unless the transferee has submitted to EPA a written certification that the transferee will manage and treat, in accordance with subpart G, any Group 1 wastewater stream or residual removed from a Group 1 wastewater stream that was received from a source subject to the requirements of this subpart. The owner or operator has to notify the third party treater that the wastewater stream or residual has to be handled and treated in accordance with the requirements of the rule.

The statements of compliance with the rule by third party treaters need only be submitted to EPA; the provisions do not contain or envision any requirements that EPA approve the written statements before shipments of wastewater streams or residuals to off-site treaters are permitted. The proposed provisions provide, however, that EPA may revoke or suspend a certification statement in the event the off-site treater violates the pertinent HON wastewater provisions. The proposed provisions also require that the written statement from the off-site treater contain a statement that EPA has not revoked or suspended a certification statement within the previous three years. The intent of this is to provide an adequate incentive for compliance on the part of the off-site treaters.

The proposed provisions also differ from the existing requirements in § 63.132(j) for notice from the owner/operator of the HON source in that the requirement that notice be provided at least once a year in the case of continuous shipments is replaced by a requirement only for notice at the outset of such shipments and when there is a change in the required treatment. In drafting the revised language, the general statements of the obligation on off-site treaters in the old § 63.132(j)(3) have been replaced with explicit cross references to the applicable requirements. This change is proposed to provide a clearer statement of the applicable requirements and to minimize potential for misunderstandings. This change is not considered to be a substantive change in the requirements for off-site treaters. Another change of significance in the provisions for third party treaters concerns the concept of sale. The phrase in the opening paragraph of § 63.132(j), permitting the sale of Group 1 wastewater streams or residuals ''for any other purpose'' has been eliminated in the proposed replacement provisions. This change is necessary in light of the revised approach to defining wastewater. Inherent in the new approach is the concept that a stream is not wastewater unless it is being discarded. Thus, the concept of selling wastewater is inherently inconsistent.

H. Addition of § 63.149 and Table 35

The proposed amendments to add a new § 63.149 and table 35 to subpart G are an outgrowth of the change from the POG concept of the April 1994 rule to the POD concept in these proposed amendments. The purpose of this new section is to ensure that the organic HAP containing fluids are properly managed in closed systems. Table 35 lists the applicable requirements for drain or drain hub, manhole, lift station, trench, oil/water separator, and tank.

I. Proposed Changes to Appendix C of Part 63

The EPA is proposing to revise appendix C to part 63 to clarify the language and to add an additional procedure for determining the fraction biodegraded in a biological treatment unit. The new procedure added to appendix C is called the Batch test procedure.

Appendix C contains instruction on how to determine the fraction biodegraded in a biological treatment unit. Today's proposal addresses several issues concerning Appendix C. The first issue concerns problems with concentrations below the detection limit for the effluent stream from the Method 304 benchscale reactor. Another issue involving the Method 304 reactor is the time and expense required to operate the benchscale reactor. Both of these issues would be addressed by the addition of the Batch tests procedure to appendix C. The proposed rule amendments would allow owners and operators to use the batch tests to determine first order biodegradation constants for compounds on Lists 1 and/or 2 of table 34 treated in a unit meeting the definition of an enhanced biological treatment process. (See the discussion of performance requirements for open biological treatment processes for further information.)

The Batch tests procedure consists of the aerated reactor test and the sealed reactor test. These two tests are less time intensive, and thereby less expensive, than the Method 304 procedure. These two tests are used widely in industry to design biological treatment units. Basic instructions for the two tests are being added to appendix C; however, these tests should be conducted only by persons familiar with procedures for determining biodegradation kinetics. References were supplied in appendix C for further information.

The appendix C requirements would be clarified by explaining that every compound present in the wastewater would not be required to have a site-specific, first order biodegradation constant determined. The owner or operator can assume the first order biodegradation constant is zero for any compound as long as the required mass removal can be demonstrated.

J. Proposed Changes to Methods 304A and 304B

The EPA is proposing to make minor revisions to Methods 304A and 304B that would clarify several points and eliminate prescriptive details while maintaining the quality of the data. Methods 304A and 304B are procedures that may be used to determine the biodegradation rates of organic compounds in biological treatment processes. The proposed revisions consist of making the terminology consistent and allowing more flexibility in the setup and operation of the methods. The section discussing the oxygen control system would be clarified. References to reactor or bioreactor would be changed to benchtop bioreactor for consistency. Additional flexibility would be added throughout the method in numerous ways such as eliminating the requirement for a specific size reactor or a specific blower, not requiring a specific hydraulic residence time, allowing alteration of the operation of the Method 304 unit to increase the effluent concentration above the limit of quantitation, and other ways. The EPA believes these changes will allow owners and operators more flexibility while maintaining the original intent of the method.

K. Alternative Control Techniques (ACT) for Industrial Wastewater

The EPA believes that today's proposal makes the Industrial Wastewater ACT internally inconsistent and is recommending that States consider the revisions to the HON wastewater provisions definitions and control approaches as discussed below when regulating sources covered by the ACT. When issued in April 1994, the

ACT consisted of three documents: a September, 1992 draft Industrial Wastewater Control Techniques Guideline (CTG); Revisions to Impacts of the Draft Industrial Wastewater CTG; and the HON wastewater provisions (as promulgated in 1994) as the model rule. The ACT was issued to assist States in selecting Reasonably Available Control Technology (RACT) for control of volatile organic compounds (VOC) from wastewater at Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) Facilities, Pharmaceutical Plants, Pesticide Sources, and Hazardous Waste Treatment Storage and Disposal Facilities in ozone nonattainment areas. In today's action, the EPA is proposing fundamental changes to the wastewater provisions of the HON. The EPA believes that these proposed amendments will result in a more effective and better-understood regulation. Thus, some aspects of the ACT are inconsistent with the revised wastewater provisions in the HON, and should not be used without considering the intent of the control requirements and these proposed revisions.

The Agency's intent has been and continues to be that the wastewater collection and treatment control philosophy will be consistent between the Industrial Wastewater ACT and the HON. Although the ACT and the HON address somewhat different pollutants (not all VOC's are HAP's, and vice-versa), the technologies and control requirements were deliberately made consistent. Specifically, the wastewater collection and treatment control philosophy is a basic approach designed to minimize emissions from designated wastewater streams meeting a certain concentration and flow rate. The approach requires control of the transfer of the designated streams to a treatment unit, treating the wastewater to a specified level, and controlling emissions from the treatment unit. Although the basic wastewater control philosophy will be the same between the HON and the ACT, there will be major differences. The Industrial Wastewater ACT and the HON will continue to differ in the compounds that are the basis for control; the ACT addresses VOC emissions and the HON is concerned with HAP emissions. The HON is a national standard for portions of the chemical industry while the Industrial Wastewater ACT addresses facilities in ozone non-attainment areas in four separate industry groups, including a broader definition of the chemical industry. The EPA still believes the RACT recommendation presented in the Draft Industrial Wastewater CTG is reasonable; however the State agency should consider all information presented in the Industrial Wastewater ACT and the HON along with additional information about specific sources to which the regulation applies.

To cite a few examples of changes to the HON that should be considered by those referencing the Industrial Wastewater ACT: the principle of a ''point of generation'' is being revised substantially and renamed ''point of determination''; the definition of ''wastewater'' is being revised; and requirements are being added for control of emissions from certain in-process streams. If the ''point of determination'' approach is adopted, the State agency should ensure that provisions similar to those in proposed section 63.149 are also adopted.

V. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes consist of new definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to the OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

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

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

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

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

The HON rule promulgated on April 22, 1994, was considered ''significant'' under Executive Order 12866, and a regulatory impact analysis (RIA) was prepared. The amendments proposed today would clarify the rule and correct structural problems with the drafting of some sections. The proposed amendments do not add any new control requirements. Therefore, this regulatory action is considered not significant.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Pub. L. 104–121, 110 Stat. 847, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required. For the reasons discussed in the April 22, 1994 Federal Register (59 FR 19449), this rule does not have a significant impact on a substantial number of small entities. The proposed changes to the rule are merely corrections and revisions that do not add new control requirements to the April 1994 rule. Therefore, the proposed changes are also not considered significant.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the

private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

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

Dated: August 15, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–21280 Filed 8–23–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7192]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street S.W., Washington, D.C. 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Sacramento County (unincorporated areas).	Cosumnes River	At confluence with North Fork Mokelumne River.	None	*19
			At the Union Pacific Railroad	None	*19
			Approximately 3,500 feet upstream of the Union Pacific Railroad.	None	*19
			Approximately 7,000 feet upstream of the Union Pacific Railroad.	None	*20
		Cosumnes River Overflow North of Lambert Road.	Approximately 250 feet upstream of the Union Pacific Railroad.	None	*17
			Approximately 1,000 feet upstream of Core Road.	None	*18