

The EPA Administrator, Michael S. Regan, signed the following notice on 7/12/2024, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2004-0022. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2004-0022; FRL-11253-01-OAR]

RIN 2060-AW06

National Emission Standards for Hazardous Air Pollutants from Hazardous Waste

Combustors Malfunction and Electronic Reporting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Hazardous Waste Combustors (HWC) to remove the exemptions and revise other provisions associated with emission standard exemptions for periods of malfunction, to add electronic reporting provisions, to amend emergency safety vent provisions, and to correct other minor provisions. The removal of the exemption for periods of malfunction is predicated on the previous vacatur of emission standard exemptions for periods of startup, shutdown, and malfunction (SSM) from the applicable general provisions. We are also proposing to remove or revise some associated requirements that are unnecessary, inappropriate, or redundant in the absence of the malfunction exemption, such as in recordkeeping and reporting. Emission standards will apply during periods of malfunction as required under the Clean Air Act (CAA). The addition of electronic reporting provisions will provide for simplified reporting by sources and will enhance the availability of

data on sources to the EPA and the public. In addition, the EPA is proposing amendments to emergency safety vent provisions and one correction to the rule to correct an inadvertent error in the Code of Federal Regulations (CFR) related to the use of Method 23 to determine compliance with the dioxin and furan standards.

DATES: Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public hearing: If anyone contacts us requesting a public hearing on or before **[INSERT DATE 5 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2004-0022, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2004-0022 in the subject line of the message.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2004-0022.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2004-0022, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand/Courier Delivery: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact U.S. EPA, Attn: Rachel Smoak, Mail Drop: E143-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-0253; and email address: smoak.rachel@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing.

To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. If requested, the hearing will be held via virtual platform on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The hearing will convene at 11 a.m. Eastern Time (ET) and will conclude at 3 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at

<https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than one (1) business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at

<https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous> or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be

[INSERT DATE 12 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have four (4) minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to smoak.rachel@epa.gov. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by **[INSERT DATE 7 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2004-0022. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in [Regulations.gov](https://www.regulations.gov/).

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to

<https://www.regulations.gov/> any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.*, Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address oaqps_cbi@epa.gov, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqps_cbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address:
OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency,
P.O. Box 12055, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-

HQ-OAR-2004-0022. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	Confidential Business Information
CDX	Central Data Exchange
CEDRI	Compliance and Emissions Data Reporting Interface
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
ERT	Electronic Reporting Tool
HAP	hazardous air pollutant(s)
HWC	hazardous waste combustor(s)
ICR	information collection request
MACT	maximum achievable control technology
NAICS	North American Industry Classification System
NESHAP	national emission standards for hazardous air pollutants
NIC	notice of intent to comply
NOC	notification of compliance
OAQPS	Office of Air Quality Planning and Standards
OMB	Office of Management and Budget
PDF	portable document format
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
SSM	startup, shutdown, and malfunction
UMRA	Unfunded Mandates Reform Act

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 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this

proposed action. The source category that is the subject of this proposal is hazardous waste combustors (HWC) regulated under 40 CFR part 63, subpart EEE, the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC NESHAP). The HWC NESHAP includes hazardous waste combusting sources from five initial source categories: hazardous waste incinerators, Portland cement manufacturing, clay products manufacturing (including lightweight aggregate kilns), industrial boilers, and hydrochloric acid production furnaces. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030, July 1992), the Hazardous Waste Incineration source category is any source that incinerates hazardous waste in “any furnace, or other device, used in the process of burning waste for the primary purpose of reducing the volume of the waste by removing combustible matter.” The Portland Cement Manufacturing source category includes “any facility engaged in manufacturing Portland cement by either the wet or dry process.” The Clay Products Manufacturing source category includes lightweight aggregate kilns and is defined as “any facility engaged in manufacturing of clay products such as brick, vitrified clay pipe, structural clay tile, and clay refractories.” The Industrial Boilers source category, “includes boilers used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.” The Hydrochloric Acid Production Furnace source category includes “any facility engaged in the production of hydrochloric acid.” Hazardous waste combusting sources from these source categories are regulated as hazardous waste combustors under 40 CFR part 63, subpart EEE, the HWC NESHAP.

Table 1. NESHAP and Industrial Source Categories Affected by This Proposed Action

Source Category	NESHAP	NAICS Code ¹
Petroleum and coal products manufacturing	40 CFR part 63, subpart EEE	3241
Chemical manufacturing	40 CFR part 63, subpart EEE	325
Cement and concrete product manufacturing	40 CFR part 63, subpart EEE	3273
Other nonmetallic mineral product manufacturing	40 CFR part 63, subpart EEE	3279
Hazardous waste treatment and disposal	40 CFR part 63, subpart EEE	562211
Remediation and other waste management services	40 CFR part 63, subpart EEE	5629

¹ North American Industry Classification System (NAICS).

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

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>. Following publication in the *Federal Register*, the EPA will post the *Federal Register* version of the proposal and key technical documents at this same website.

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 63, subpart EEE proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2004-0022). Following signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP)

from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the “residual risk review.” In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years and revise the standards as necessary taking into account any “developments in practices, processes, or control technologies.” This review is commonly referred to as the “technology review”. This action proposes to amend the current rule to remove an exemption that is inconsistent with the statute and to update the reporting requirements in preparation for conducting the required residual risk and technology reviews.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

Hazardous waste combustors are incinerators, cement kilns, lightweight aggregate kilns, boilers, or hydrochloric acid production furnaces that combust hazardous waste for the purpose of waste reduction, thermal energy recovery, and/or production of a product. The HWC NESHAP covers hazardous air pollutant emissions from hazardous waste combustors at major and area sources. The key pollutants the EPA regulates from these sources include polychlorinated dibenzodioxins and furans (PCDD/PCDF), mercury, cadmium, lead, arsenic, beryllium, chromium, hydrogen chloride, chlorine, other hydrocarbon HAP, and non-enumerated metal HAP.

The HWC NESHAP was first promulgated in 1999 and regulated hazardous waste incinerators, cement kilns, and lightweight aggregate kilns.¹ These standards were amended and

¹ 64 FR 52828 (September 30, 1999).

standards for hazardous waste solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces were added in 2005.² Subsequent amendments to the HWC NESHAP were made in 2005, 2006, and 2008.³ The EPA sought and received a full voluntary remand of the rule in 2009 to reexamine the rule in its totality.⁴

In a 2008 decision (*Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008)), the United States Court of Appeals for the District of Columbia Circuit (the court) vacated portions of two provisions in the NESHAP General Provisions governing the emissions of HAP during periods of SSM. Specifically, the court vacated NESHAP General Provisions language that exempted sources from HAP non-opacity and opacity emission standards contained in 40 CFR 63.6(f)(1) and (h)(1). The court held that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that “the SSM exemption violates the CAA’s requirement that some section 112 standards apply continuously.”

III. Proposed Actions

A. What actions are we proposing, and what is the rationale for those actions?

In this proposal, we are proposing the following revisions to the HWC NESHAP: (1) removal or revision of provisions associated with emission limit exemptions for periods of malfunction, including some recordkeeping and reporting requirements and General Provisions applicability; (2) amendment to emergency safety vent provisions, including recordkeeping requirements; (3) addition of electronic reporting provisions; and (4) a technical correction

² 70 FR 59402 (October 12, 2005).

³ 70 FR 75042 (December 19, 2005); 71 FR 62388 (October 25, 2006); and 73 FR 64068 (October 28, 2008).

⁴ *Sierra Club v. EPA*, Docket No. 05-1441 (consolidated with Docket Nos. 05-1442, 05-1443, 05-1445, 05-1449) (D.C. Cir.).

related to the use of Method 23 to determine compliance with the PCDD/PCDF standards. The proposed decisions, as well as the rationale for those decisions, are presented below.

1. Periods of malfunction

We are proposing revisions to the malfunction provisions of the NESHAP in order to ensure that they are consistent with the decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), in which the court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We are proposing the elimination of the malfunction exemption in this rule which appears at 40 CFR 63.1206(b)(1)(i), (c)(2)(v), and (c)(4)(i). The EPA is in the process of gathering and evaluating data about startup and shutdown to evaluate whether sources can meet the normal operations standards during periods of startup and shutdown or if alternative standards for these periods are warranted and, if alternative standards are warranted, to develop them. Due to the amount of time needed for these activities, the removal of the startup and shutdown exemptions along with revisions to associated recordkeeping and reporting provisions will be undertaken in a subsequent planned rulemaking action.

With the issuance of the mandate in *Sierra Club v. EPA*, on October 16, 2009, the vacatur became effective and the regulatory provisions contained in 40 CFR 63.6(f)(1) and (h)(1) became null and void. The EPA amended 40 CFR 63.6(f)(1) and (h)(1) on March 11, 2021, to reflect the court order and correct the CFR to remove the SSM exemption.⁵ We are removing any cross-references to the vacated provisions in the regulatory language to conform to the court's order in *Sierra Club v. EPA*.

⁵ 86 FR 13819 (March 11, 2021).

We are also proposing several revisions to the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) in the HWC NESHAP as is explained in more detail below. We also are proposing to revise certain recordkeeping and reporting requirements related to the malfunction exemption as further described below.

We are not proposing changes to the emissions limits of the HWC NESHAP even though we are removing the exemption from emission limits during periods of malfunction. Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA has interpreted CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. This reading has been upheld as reasonable by the D.C. Circuit since at least 2016. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606-610 (D.C. Cir.) (2016). Although no statutory language compels the EPA to set different standards for periods of malfunction, we have the discretion to do so where feasible.

2. Recordkeeping and reporting requirements and General Provision applicability

Because we are proposing amendments to 40 CFR part 63, subpart EEE, we are also proposing related revisions to the recordkeeping and reporting requirements and to the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE).

a. Section 63.1206(b)(1) General Duty

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.6(e) by removing the applicability of 40 CFR 63.6(e)(1)(i), which describes the general duty to minimize emissions. Some of the language in

that section is no longer either necessary or appropriate considering the elimination of the malfunction exemption. We are proposing instead to add regulatory text at 40 CFR 63.1206(b)(1) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by a malfunction exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of malfunction. With the elimination of the malfunction exemption, there is no need to differentiate between normal operations and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.1206(b)(1) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.6(e) by removing the applicability of 40 CFR 63.6(e)(1)(ii). Section 63.6(e)(1)(ii) imposes requirements that are no longer necessary with the elimination of the malfunction exemption or are redundant with the general duty requirement being added at 40 CFR 63.1206(b)(1).

b. SSM Plan

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.6(e) by removing the applicability of 40 CFR 63.6(e)(3)(i)(A), which requires owners or operators to satisfy the general duty to minimize emissions at all times. The cross-reference to the general duty requirement is redundant with the general duty requirement being added at 40 CFR 63.1206(b)(1).

c. Compliance with Standards

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.6(f) by removing the applicability of 40 CFR

63.6(f)(1), which requires that non-opacity emission standards apply at all times except as otherwise specified in an applicable subpart. Consistent with *Sierra Club*, the EPA amended 40 CFR 63.6(f)(1) and (h)(1) on March 11, 2021, to reflect the mandate and correct the CFR to remove the SSM exemption. However, the second sentence of 40 CFR 63.6(f)(1) contains language that is premised on the existence of an exemption and is inappropriate in the absence of the malfunction exemption.

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.6(h) by removing the applicability of 40 CFR 63.6(h)(1), which requires that opacity and visible emission standards apply at all times except as otherwise specified in an applicable subpart. Consistent with *Sierra Club*, the EPA amended 40 CFR 63.6(h)(1) on March 11, 2021, to reflect the mandate and correct the CFR to remove the SSM exemption. However, the second sentence of 40 CFR 63.6(h)(1) contains language that is premised on the existence of an exemption and is inappropriate in the absence of the malfunction exemption.

d. Section 63.1207(g) Performance Testing

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.7(e) by removing the applicability of 40 CFR 63.7(e)(1), which describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.1207(g). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the malfunction exemption and language that precluded operations during periods of SSM periods from being considered “representative” for purposes of performance

testing. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during periods of SSM because conditions may not be representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation; conducting performance testing under operating conditions representative of the extreme range of normal conditions is consistent with this requirement. The language in 40 CFR 63.7(e) requires that the owner or operator make available to the Administrator such records “as may be necessary to determine the condition of the performance test” but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.8(c) by removing the applicability of 40 CFR 63.8(c)(1)(i), which requires that owners or operators maintain and operate each continuous monitoring system in compliance with the general duty requirement. The cross-reference to the general duty requirement in that subparagraph is not necessary considering other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

f. Section 63.1211(a) Reporting

We are also proposing to revise 40 CFR 63.1211(a), which summarizes reporting requirements, by adding language that requires sources that fail to meet an applicable standard at

any time to report the information concerning such events in both the excessive emissions and continuous monitoring system performance report and summary report already required under this rule. We are proposing that the report must contain the start date, start time, end date, end time, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

g. Section 63.1211(e) Recordkeeping

We are proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.10 by removing the applicability of 40 CFR 63.10(b)(2)(i), which describes the recordkeeping requirements during startup and shutdown. It will continue to be important to know when such startup and shutdown periods begin and end in order to determine compliance with the appropriate standard for normal operations. We are proposing to add recordkeeping requirements to 40 CFR 63.1211(e) that require recordkeeping of startup and shutdown events and require reporting related to all exceedances.

We are also proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.10 by removing the applicability of 40 CFR 63.10(b)(2)(ii), which describes the recordkeeping requirements during a malfunction. The EPA

is proposing to add such requirements to 40 CFR 63.1211(e). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that sources record the start date, start time, end date, end time, and cause (including an unknown cause, if applicable) of any event in which an affected source fails to meet an applicable standard. The EPA is also proposing to add a requirement that sources keep records that includes the affected source or equipment, whether the failure occurred during a period of SSM, actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are also proposing to revise the General Provisions Applicable to Subpart EEE table (Table 1 to subpart EEE) entry for 40 CFR 63.10 by removing the applicability of 40 CFR 63.10(b)(2)(iv)(B), which requires sources to record actions to minimize emissions and record corrective actions. This requirement is now applicable by reference to 40 CFR 63.1211(e).

3. Emergency safety vent operating plan

We are proposing revisions to the emergency safety vent openings provisions to remove the requirement for an emergency safety vent operating plan in 40 CFR 63.1206(c)(4)(ii) and bolster the associated reporting requirements. With the elimination of the exemption for periods of malfunction, affected units are subject to an emission standard during openings of emergency safety events that occur outside of periods of startup and shutdown. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus emergency safety vent operating plans are no longer necessary.

4. Electronic reporting

The EPA is proposing that owners or operators of hazardous waste combustor facilities submit electronic copies of required notices of intent to comply (NIC), notifications of compliance (NOC), notifications of changes that may adversely affect compliance, compliance progress reports, excessive emissions and continuous monitoring system performance reports and summary reports, performance test reports, performance evaluation reports, and periodic SSM reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in the docket for this action. The proposed rulemaking requires that the owner or operator submit performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website⁶ at the time of the test in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and it requires that the owner or operator submit other

⁶ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

performance test results in portable document format (PDF) using the attachment module of the ERT. Similarly, the proposed rulemaking requires the owner or operator to submit performance evaluation results of continuous emissions monitoring systems (CEMS) measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT at the time of the test in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and it requires that the owner or operator submit other performance evaluation results in PDF using the attachment module of the ERT. The proposed rulemaking requires the owner or operator to submit NOC, NIC, compliance progress reports, excessive emissions and continuous monitoring system performance reports and summary reports, periodic SSM reports, and notifications of changes that may adversely affect compliance as a PDF upload in CEDRI.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are: (1) outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports, and (2) force majeure events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of force majeure events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to protect owners or operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of

needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan⁷ to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy⁸ developed in response to the White House's Digital Government Strategy.⁹ For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, referenced earlier in this section.

⁷ EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154>.

⁸ E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: <https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf>.

⁹ Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>.

5. Technical correction

On March 20, 2023, 40 CFR part 63, subpart EEE was updated to remove the requirement for Administrator approval to use EPA Method 23 in compliance demonstrations for PCDD/PCDF, reflecting revisions to EPA Method 23 made in March 2023.¹⁰ The reference to requiring Administrator approval for such measurements in 40 CFR 63.1207(f)(1)(xv) was inadvertently retained in the rule, and so we propose to remove the requirement and reserve 40 CFR 63.1207(f)(1)(xv).

B. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

The EPA is proposing to allow 180 days from the date of the final rule for compliance with the malfunction exemption removal, emergency safety vent operating plan removal, recordkeeping and reporting and General Provisions revisions, and electronic reporting requirements other than performance test and performance evaluation reports. The EPA is proposing to allow 90 days from the date of the final rule for compliance with electronic submission of performance test and performance evaluation results. Because the proposed technical correction is non-substantive, the EPA is proposing to make it effective immediately upon promulgation of the final rule.

The EPA is proposing changes that affect ongoing compliance for this subpart, namely removing the provisions that provide an exemption from the requirements to meet the standard during periods of malfunction, removing the requirement for an emergency safety vent operating plan, adding electronic reporting provisions, and updating recordkeeping and reporting requirements and General Provisions applicability in keeping with the proposed revisions. Our

¹⁰ 88 FR 16732 (March 20, 2023).

experience with other similar industries shows that such facilities generally require a period of 180 days to read and understand the amended rule requirements, to evaluate their operations for any changes needed to meet the revised requirements, and to update their operations to reflect their revised requirements.

In contrast, the EPA is proposing no changes to the content of performance test and performance evaluation reports, only the method of reporting. Our experience with requiring electronic reporting of performance tests and performance evaluations in other industries shows that as the ERT has been in use by source testing companies since 2004, less time is necessary for its implementation, and that facilities generally require a period of 90 days to understand and become familiar with the process of submitting performance test and performance evaluation results electronically through the EPA's CEDRI. Accordingly, we propose that 90 days would be sufficient time for facilities with hazardous waste combustors to complete these tasks.

IV. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The hazardous waste combustor source category comprises incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that combust hazardous waste. Currently, the EPA has identified 177 hazardous waste combustors at 96 facilities owned by 82 corporate entities. Of these, 70 are incinerators, 67 are liquid fuel boilers, 17 are hydrochloric acid production furnaces, 14 are cement kilns, 7 are solid fuel boilers, and 2 are lightweight aggregate kilns. We estimate that four new hazardous waste combustors may begin operations in the next five years.

B. What are the air quality impacts?

We do not anticipate that the proposed amendments to this subpart will impact air quality. The addition of electronic reporting provisions, amendments to the emergency safety vent provisions, and correction of inadvertent errors do not affect the stringency of the standards in 40 CFR part 63, subpart EEE. Because malfunctions are, by definition, not reasonably preventable, we do not expect the removal of the emissions limit exemption for periods of malfunction to impact hazardous air pollutant emissions or, subsequently, air quality.

C. What are the cost impacts?

The EPA estimated costs for this proposed action based on the results of the analysis for information collection activities, as presented in the Paperwork Reduction Act (PRA) section, Economic Impact Analysis memorandum, and accompanying Information Collection Request (ICR) documents in the docket. The EPA estimated the incremental industry costs of the rule to be \$2,600 per unit in the first year and \$840 in each of the subsequent years. Total incremental industry costs of the rule are estimated to be \$470,000 in the first year and \$150,000 in each of the subsequent years. These costs are small relative to the estimated revenue of the hazardous waste treatment and disposal industry (approximately \$9 billion in 2021).

D. What are the economic impacts?

Because of the low costs, relatively small number of affected existing units (fewer than 200) and because the EPA anticipates 4 affected new sources in the next 5 years, the EPA expects minimal economic impacts under the final rule.

E. What are the benefits?

The proposed amendments require electronic submittal of performance tests, deviation reports, and annual compliance reports, which will streamline reporting for affected sources and increase the usefulness of the data and improve data accessibility for the public. The electronic

reporting requirements will, therefore, further assist in the protection of public health and the environment and will ultimately result in less burden on the regulated community. No air quality benefits are expected, quantified, or monetized.

F. What analysis of environmental justice did we conduct?

For purposes of analyzing regulatory impacts, the EPA relies upon its June 2016 “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,” which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential EJ concerns if it could: (1) create new disproportionate impacts on communities with EJ concerns; (2) exacerbate existing disproportionate impacts on communities with EJ concerns; or (3) present opportunities to address existing disproportionate impacts on communities with EJ concerns through this action under development.

The EPA’s EJ technical guidance states that “[t]he analysis of potential EJ concerns for regulatory actions should address three questions: (A) Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline? (B) Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration? (C) For the regulatory option(s) under consideration, are potential EJ concerns created or mitigated compared to the baseline?”¹¹

¹¹ Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, U.S. EPA, June 2016. Section 3 – Key Analytic Considerations, page 11. Available at:

The environmental justice analysis is presented for the purpose of providing the public with as full as possible an understanding of the potential impacts of this proposed action. The EPA notes that analysis of such impacts is distinct from the determinations proposed in this action under CAA section 112, which are based solely on the statutory factors the EPA is required to consider under that section.

To examine the potential for any EJ concerns that might be associated with HWC NESHAP facilities, we performed a proximity demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 km (~3.1 miles) and 50 km (~31 miles) of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups. It should be noted that proximity to affected facilities does not indicate that any exposures or impacts will occur and should not be interpreted as a direct measure of exposure or impact. This limits the usefulness of proximity analyses when attempting to answer questions from EPA's EJ Technical Guidance.

The results show that for populations within 5 km of the 96 hazardous waste combustor facilities, the following demographic groups were above the national average: Black (19 percent versus 12 percent nationally), Hispanic/Latino (21 percent versus 19 percent nationally), people age 0 to 17 years (24 percent versus 22 percent nationally), people living below the poverty level (19 percent versus 13 percent nationally), people below two times the poverty level (38 percent versus 29 percent nationally), and people over the age of 25 without a high school diploma (15 percent versus 12 percent nationally).

<https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

The results show that for populations within 50 km of the 96 hazardous waste combustor facilities, the percent of the population that is Black is above the national average (14 percent versus 12 percent nationally).

A summary of the proximity demographic assessment performed is included as Table 2 of this preamble. The methodology and the results of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Waste Combustor NESHAP Facilities*, which is available in the docket for this action.

Table 2. Proximity Demographic Assessment Results for Hazardous Waste Combustors

Demographic Group	Nationwide Average for Reference	Population within 50 km of 96 Facilities	Population within 5 km of 96 Facilities
Total Population	329,824,950	55,520,566	1,772,399
Race and Ethnicity by Percent			
White	60 percent	62 percent	53 percent
Black	12 percent	14 percent	19 percent
American Indian	0.6 percent	0.3 percent	0.3 percent
Hispanic or Latino (includes white and nonwhite)	19 percent	14 percent	21 percent
Other and Multiracial	9 percent	8 percent	7 percent
Age by Percent			
Age 0 to 17 years	22 percent	22 percent	24 percent
Age 18 to 64 years	62 percent	62 percent	62 percent
Age ≥ 65 years	16 percent	16 percent	14 percent
Income by Percent			
Below Poverty Level	13 percent	12 percent	19 percent
Below 2x Poverty Level	29 percent	28 percent	38 percent
Education by Percent			
Over Age 25 and without a High School Diploma	12 percent	10 percent	15 percent
Linguistically Isolated by Percent			
Linguistically Isolated	5 percent	4 percent	5 percent

Notes:

Nationwide population and demographic percentages are based on Census' 2016-2020 American Community Survey 5-year block group averages and include Puerto Rico. The total population counts are based on the 2020 Decennial Census block populations. To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.

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

Because the EPA does not expect this action to impact air quality, this action is not relevant to human health and the EPA's *Policy on Children's Health* does not apply. This action also does not concern an environmental health risk or safety risk, so Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks does not apply.

V. Request for Comments

We solicit comments on this proposed action. The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the malfunction exemption. We are specifically seeking comment on whether we have successfully done so. The EPA is also soliciting comment on whether a work practice standard for periods of malfunction for reasons of safety should be set for hazardous waste combustors and, if yes, what the work practice standard should comprise.

The EPA also solicits comment on the proposed compliance dates, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at

<https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094:

Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and is therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rulemaking have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2803.01. You can find a copy of the ICR in the docket for this proposed rulemaking, and it is briefly summarized here.

The goal of this information collection request (ICR) is to collect new monitoring, reporting and recordkeeping data from hazardous waste combustors (HWC) subject to emission standards under 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. The key revisions to this subpart are the removal of exemptions for emissions during malfunction periods in response to *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008) and the addition of e-reporting using the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) to replace physically mailing many of the reports and notifications required under this subpart. These revisions require modifications to the monitoring, reporting, and recordkeeping requirements of the rule. The information collected in this ICR will be used to ensure compliance with this subpart. All information submitted to the agency in response to the ICR will be managed in accordance with applicable laws and the EPA's regulations governing treatment of confidential business information at 40 CFR part 2, subpart B. Any information determined to constitute a trade secret will be protected under 18 U.S.C. 1905.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of hazardous waste combustors subject to emission standards under 40 CFR part 63, subpart EEE.

Respondent's obligation to respond: Mandatory under the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (40 CFR part 63, subpart EEE).

Estimated number of respondents: 96

Frequency of response: Semiannually, quarterly.

Total estimated burden: 2,560 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$257,000 (per year), includes \$0 annualized capital or operation & maintenance costs.

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

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rulemaking. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review – Open for Public Comments" or by using the search function. OMB must receive comments no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses in the NESHAP and industrial source categories listed in Table 1 operating hazardous waste combustors. The Agency has determined that, in the 2025 analysis year, 9 potentially affected small entities operating 18 units at 9 facilities may experience an impact of less than 1 percent of revenue under the proposed rulemaking. Details of this analysis are presented in the document titled *Economic Impact Analysis for the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors Malfunction and Electronic Reporting Amendments*.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed \$100 million or more.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. The EPA is not aware of any hazardous waste combustor unit owned or operated by tribal governments. This action will not have substantial direct costs or impacts on the relationship between the Federal Government and Indian Tribes or on the distribution of power and

responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. As stated in

section IV.F of this preamble, we performed a proximity demographic analysis for 96 existing facilities with hazardous waste combustors that are currently subject to 40 CFR part 63, subpart EEE. A total of 1.8 million people live within 5 kilometers (approximately 0.1 miles) of these facilities. The proportion of demographic groups living near these hazardous waste combustors are above the national average for Black, Hispanic or Latino, people aged 0 to 17 years, people below the poverty level, people below two times the poverty level, and people over the age of 25 and without a high school diploma. See section IV.F of this preamble for further results of the analysis.

The EPA believes that this action is not likely to change existing disproportionate and adverse effects on communities with environmental justice concerns. The EPA does not anticipate that the proposed amendments to the subpart will impact air quality because the EPA does not expect any of the proposed provisions to affect hazardous air pollutant emissions, and so is not likely to change existing disproportionate and adverse effects on communities with environmental justice concerns. Because malfunctions are, by definition, not reasonably preventable, we do not expect the removal of the emissions limit exemption for periods of malfunction to impact hazardous air pollutant emissions or, subsequently, air quality. The addition of electronic reporting provisions, amendments to the emergency safety vent provisions, and correction of inadvertent errors are primarily changes to recordkeeping and reporting requirements, and so do not impact hazardous air pollutant emissions.

The information supporting this Executive Order review is contained in section IV.F of this preamble. The demographic analysis is presented in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Waste Combustor NESHAP Facilities*, which is available in the docket for this action, EPA-HQ-OAR-2004-0022.

List of Subjects in 40 CFR Part 63

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

Michael S. Regan,

Administrator.