

The Administrator of EPA signed this Proposed Rule on March 15, 2006, and EPA has submitted it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this advance public release, it is not an official copy of the rule. The official source for the electronic *Federal Register* is the Government Printing Office, which can be accessed at <http://www.gpoaccess.gov/fr/index.html>.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

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

RIN 2050-AG29]

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 12, 2005, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing hazardous waste combustors. Subsequently, the Administrator received four petitions for reconsideration of the final rule. In this proposed rule, EPA is granting reconsideration of one issue in the petitions submitted by Ash Grove Cement Company and the Cement Kiln Recycling Coalition: the new source standard for particulate matter (PM) for cement kilns that burn hazardous waste. We are requesting comment on a revised new source particulate matter standard for cement kilns. We are also requesting comment on corresponding changes to the new source particulate matter standards for incinerators and liquid fuel boilers.

DATES: *Comments.* Written comments must be received by **[INSERT DATE 30**

DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER],

unless a public hearing is requested by **[INSERT DATE 10 DAYS FROM THE DATE**

OF PUBLICATION IN THE FEDERAL REGISTER]. If a hearing is requested,

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written comments must be received by **[INSERT DATE 45 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by **[INSERT DATE 10 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a public hearing on **[INSERT DATE 15 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0022, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov.
- Fax: 202-566-1741.
- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and

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special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

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 www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit

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the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA-HQ-OAR-2004-0022, EPA West Building, Room B-102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566-1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. A reasonable fee may be charged for copying docket materials.

Public Hearing. If a public hearing is requested, it will be held at 10 a.m. at EPA's Crystal Station office building, 2800 Crystal Drive, Arlington, Virginia, or at an alternate site in the Washington DC metropolitan area. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. Frank Behan, EPA, at telephone number (703) 308-8476 or at e-mail address:

behan.frank@epa.gov, at least two days in advance of the potential date of the public

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hearing. Persons interested in attending the public hearing also must call Mr. Behan to verify the time, date, and location of the hearing.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308-8476, or behan.frank@epa.gov, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW at <http://www.epa.gov/hwcmact>.

Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).

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- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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I. General Information

- A. *What is the Source of Authority for the Reconsideration Action?*

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The statutory authority for this action is provided by sections 112 and 307(d)(7)(B) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412 and 7607(d)(7)(B)). This action also is subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

B. What Entities Are Potentially Affected by the Reconsideration Action?

Categories and entities potentially affected by this action include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule	562211	4953	Incinerator, hazardous waste
	327310	3241	Cement manufacturing, clinker production
	327992	3295	Ground or treated mineral and earth manufacturing
	325	28	Chemical Manufacturers
	324	29	Petroleum Refiners
	331	33	Primary Aluminum
	333	38	Photographic equipment and supplies
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials
	422	51	Chemical and Allied Products, N.E.C
	512, 541, 561,	73	Business Services, N.E.C.
	812	89	Services, N.E.C.
	512, 514, 541,	95	Air, Water and Solid Waste Management
	711		
924			

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other

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types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 112 of the CAA requires that we establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing major sources. Major sources of HAP are those stationary sources or groups of stationary that are located within a contiguous area under common control that emit or have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT (for Maximum Achievable Control Technology).

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the

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best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory).

In developing MACT standards, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements. We call these standards beyond-the-floor standards.

We proposed NESHAP for hazardous waste combustors on April 20, 2004 (69 FR 21198), and we published the final rule on October 12, 2005 (70 FR 59402). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We received over 75 public comment letters on the proposed hazardous waste combustor rule. Comments were submitted by industry trade associations, owners and operators of hazardous waste combustors, environmental groups, and State regulatory agencies and their representatives. We summarized the major public comments on the proposed rule and our responses to public comments in the preamble to the final rule and in a separate, supporting “response to comments” document. See 70 FR at 59426 and docket items EPA-HQ-OAR-2004-0022-0437 through 0445.

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Following promulgation of the hazardous waste combustor final rule, the Administrator received four petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from Ash Grove Cement Company, the Cement Kiln Recycling Coalition (CKRC), the Coalition for Responsible Waste Incineration (CRWI), and the Sierra Club.¹ Under this section of the CAA, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

Ash Grove Cement Company and CKRC both are requesting that EPA reconsider the same three issues: the particulate matter standard for new cement kilns, references to Performance Specification 11 and Procedure 2 of Appendix B to 40 CFR part 60 in the particulate matter detector system provisions, and preamble statements concerning burning for energy recovery. The CRWI is requesting that EPA reconsider the procedure used to identify the MACT floor for mercury and low volatile metals for new source incinerators where there was a tie in ranking sources to determine the best performing source.

¹ These petitions are included in the docket supporting this proposal. See items EPA-HQ-OAR-2004-0022-0516 thru 0519. EPA also received petitions from Ash Grove Cement Company and the CKRC, Continental Cement Company, and Giant Cement Holding, Inc. requesting that we stay the effective date of the particulate matter standard for new cement kilns. See items EPA-HQ-OAR-2004-0022-0521 and 0523. As published elsewhere in today's *Federal Register*, EPA is issuing an administrative stay of this standard for three months while we reconsider the issue. In addition, five petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by the following entities: Ash Grove Cement Company, CKRC, CRWI, the Environmental Technology Council, and the Sierra Club.

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Sierra Club is requesting that EPA reconsider several aspects of the final rule.

They include our decisions to subcategorize incinerators with and without dry air pollution control devices, subcategorize the liquid fuel boiler source category, base the mercury standard for cement kilns on industry-submitted data, correct total chlorine data to address potential bias in the stack measurement method, use particulate matter as a surrogate for the nonenumerated HAP metals (i.e., antimony, cobalt, manganese, nickel, and selenium), use carbon monoxide and hydrocarbons as surrogates both for dioxin/furans and for non-dioxin/furan organic HAPs, and use variability factors in identifying MACT floors. Sierra Club also requests that EPA reconsider the dioxin/furan MACT floor for cement kilns and incinerators, several beyond-the-floor analyses, and the health-based compliance alternatives for total chlorine.

III. Today's Action

Today, we are granting reconsideration of one issue – the particulate matter standard for new cement kilns – raised in the petitions both of Ash Grove Cement Company and CKRC. We agree that it was impracticable for interested parties to raise concerns about one aspect of the particulate matter standard for new cement kilns until after the public comment period when the particulate matter standard was promulgated. Although we believe we provided adequate notice and opportunity to comment on the methodology used to determine the particulate matter analysis and the approach used to quantify test-to-test variability for fabric filters (baghouses) using a universal variability factor (see 69 FR at 21225; 70 FR at 59437, 59447-450), it appears that there was

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legitimate confusion regarding whether we would base the new source standard on data from Ash Grove Cement's Chanute, Kansas facility.

Moreover, we also agree that it appears that the promulgated new source standard for particulate matter for cement kilns is overly stringent in that it does not fully reflect the variability of the best performing source over time (the "emission control that is achieved in practice," using the language of section 112(d)(3)). Additional performance data submitted by the petitioners for Ash Grove Cement's Chanute, Kansas facility² support this conclusion. The specific point of contention is our use of particulate matter emissions data from this source as the basis of the new source standard for cement kilns (i.e., the single best performing source). The petitioners state that EPA used emissions data from this source that were not representative of the source's performance over time (as evidenced by their additional data submission).

For the reasons set out in the following section of this preamble, we believe it is appropriate to grant reconsideration to provide the public with the opportunity to comment on a revised particulate matter standard for new cement kilns, and on corresponding revisions to the particulate matter standards for new incinerators and liquid fuel boilers.

We are not addressing at this time the two remaining issues in the petitions of Ash Grove Cement Company and CKRC or any of the issues in the petitions for reconsideration of CRWI and Sierra Club. We will notify petitioners by letter or in a

² All references in this notice to emissions data from Ash Grove Cement Company pertain to the cement plant located in Chanute, Kansas.

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future *Federal Register* notice of our decision whether to grant or deny the remaining issues raised by these petitions. We are consequently not accepting comments at this time on the remaining petition for reconsideration issues.

IV. Reconsideration of Particulate Matter Standards

A. Background on the Particulate Matter Floor

In the notice of proposed rulemaking, we described methodologies used to determine MACT floors for HAP, including the air pollution control technology approach used specifically for particulate matter (which is a surrogate for HAP metal). 69 FR at 21223-233. We discussed how we selected representative data for each source so that we could identify the best performing sources for existing sources (and the single best performing source for new sources) and how we calculated the MACT floor levels for each HAP for each source category. We also described how emissions variability was accounted for by the proposed floor methodology. This included a universal variability factor (UVF) that was used only for the particulate matter standard to address long-term variability in particulate matter emissions of sources using fabric filters.³ After identifying floor levels, we considered beyond-the-floor standards for each HAP. The results of considering control options that are more stringent than the floor level are discussed in Part Four, Sections VII-XII of the proposed rule. For example, the beyond-

³ It is important to note that the UVF relationship is not developed for each source category, but is based on relevant data from all hazardous waste combustor source categories. 70 FR at 59459-450 and “Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,” September 2005, Sections 5.3 and 7.4. Therefore, changes in the data underlying the UVF relationship can result in changes to the particulate matter standards for all source categories.

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the-floor discussion for particulate matter for cement kilns can be found at 69 FR at 21254.

We also briefly discussed available particulate matter data from Ash Grove Cement’s Chanute, Kansas kiln in the proposed rule. In the context of our discussion on whether it is appropriate to use emissions data from sources that tested after retrofitting their emission control systems to meet the emission standards promulgated in September 1999 (and since vacated and replaced by the February 2002 Interim Standards), we stated that “we did not consider emissions data from Ash Grove Cement Company” and that “[w]e judged these data are inappropriate for consideration for the floor analysis for existing sources.” 69 FR at 21217 n. 35. While the proposal was thus clear that available data from Ash Grove Cement would not be used in the floor analysis for existing sources, we did not state whether or not these data would be evaluated in the new source floor analysis. We in fact did not use the emissions data from Ash Grove Cement in the proposal for either the existing source or new source floor analyses.⁴

In the final rule, we adopted the same floor methodology to determine floor levels for particulate matter. The preamble to the final rule also presented a summary of our response to significant comments regarding the methodology we used to ascertain floor levels for the particulate matter standards (termed the ‘air pollution control technology methodology’). 70 FR at 59447. The emissions data from Ash Grove Cement were considered when calculating the particulate matter MACT floors for new cement kilns,

⁴ See USEPA, “Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,” March 2004, Appendix F (APCD Approach Results Tables), Table APCD-CK-PM, docket item EPA -HQ-OAR-2004-0022-0039.

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but were not used in calculating the existing source particulate matter MACT floor. 70 FR at 59419. As explained in the response to comments document, this is because we concluded that the cement kiln operated by Ash Grove Cement meets the definition of a new source under CAA section 112(a)(10).⁵

The petitioners explain that the data EPA used (i.e., Ash Grove Cement’s Chanute, Kansas data) in the analysis were obtained when the baghouse and filter bags were new and not representative of the source’s performance over time. Petitioners present more recent data documenting that, in fact, the source’s performance has degraded as expected from initial operations. As a result, the petitioners claim that the promulgated particulate matter standard for new sources – 0.0023 gr/dscf – is unachievable once a kiln with a new baghouse system operates for any appreciable time, even for kilns equipped with the best controls and employing the best maintenance procedures in the cement industry. This unique situation – the use of data from a facility when both the fabric filter bags and baghouse structure were new – produced performance data that cannot be achieved when the filter bags and baghouse are not new (e.g., after the first year or so). The petitioners submitted additional particulate matter performance data from Ash Grove Cement taken after the initial “break-in period” that they claim supports their position. These data are shown in Table 1 below.

⁵ See USEPA, “Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume I: MACT Issues,” September 2005, Section 1.3.3, docket item EPA-HQ-OAR-0022-0440.

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Table 1 – Particulate Matter Performance Data of Ash Grove Cement after First Year of Operation⁶

Test Date	PM Emissions (gr/dscf)
December 4, 2003	0.0051
December 5, 2003	0.0072
September 8, 2004	0.0022
September 9, 2004	0.0007
November 15, 2005	0.0074
November 15, 2005	0.0080
November 15, 2005	0.0026
November 16, 2005	0.0042
November 16, 2005	0.0031
November 16, 2005	0.0032
November 17, 2005	0.0025
November 17, 2005	0.0010
November 17, 2005	0.0016

The petitioners claim that these data show that the promulgated particulate matter standard of 0.0023 gr/dscf is unachievable when the fabric filter bags and baghouse structure are not new.⁷ Table 1 shows that Ash Grove Cement – the single best performing source and basis of the new source particulate matter standard in the final rule – would only achieve the emissions standard in four of the 13 runs measured after the initial break-in period. The petition documents that the source was properly operating the emission control equipment when these subsequent tests were conducted. We also regard the operating conditions of the new data to be comparable to those under which the initial tests were done because fabric filter particulate matter reduction is relatively independent

⁶ For an evaluation of the additional data submitted by the petitioners, see USEPA, “Draft Technical Support Document for HWC MACT Standards – Reconsideration of the New Source Particulate Matter Standard for Cement Kilns,” March 2006.

⁷ Note that the 0.0023 gr/dscf standard is based on average emissions of 0.0010 gr/dscf obtained during the first year of operation.

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of inlet loadings to the fabric filter.⁸ Thus, the levels of ash in the hazardous waste and the feedrate of raw materials do not significantly affect particulate matter emissions from cement kilns equipped with baghouses because these control devices are not sensitive to particulate matter inlet loadings.

B. What Changes Are Being Proposed to the Particulate Matter Standard?

We agree with the petitioners that it appears that the promulgated standard of 0.0023 gr/dscf is overly stringent for cement kilns in that it does not fully reflect the variability of the best performing source over time once fabric filters and baghouse structures are no longer in a new condition.⁹ The data submitted by the petitioner appear to better represent “the emission control achieved in practice” (section 112(d)(3) of the CAA). See *Mossville Environmental Action Now v. EPA*, 370 F. 3d 1232, 1242 (D.C. Cir. 2004). As a result, we are proposing to substitute the data submitted by the petitioner for Ash Grove Cement for the particulate matter data used in the final rule. This would lead to this source’s performance for particulate matter (i.e., the upper 99th percentile prediction limit) being 0.0075 gr/dscf, derived using the air pollution control device approach and a revised universal variability factor relationship (i.e., to account for the new Ash Grove Cement data) to model particulate matter performance and fabric

⁸ USEPA, “Technical Support Document for the HWC MACT Standards, Volume I: Description of Source Categories,” September 2005, Section 3.2.2.

⁹ Based on available information, we believe that the data from Ash Grove Cement are the only instance in our emissions data base where we had a source in a completely new condition. Thus, we do not believe this precise issue arises for other standards.

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filter variability.¹⁰ This performance is actually slightly worse than that achieved by two other cement kilns, Giant Cement Holding, Inc. (Giant Cement) in Harleyville, South Carolina, and Lafarge North America in Paulding, Ohio. As a result, the Ash Grove Chanute kiln is no longer the single best performing source, and we would instead base the particulate matter floor standard for new cement kilns on the performance of Giant Cement, which achieved an upper 99th percentile prediction limit of 0.0069 gr/dscf.¹¹

As just noted, our methodology for calculating floors for particulate matter involves use of a universal variability factor (UVF), obtained by relating the test-to-test variability (i.e., standard deviation) of the best performing fabric filters to emission concentration.¹² In the final rule, data from the Ash Grove Cement kiln, as one of the best performing kilns, were used as part of this pool of data from best performing sources. Because Ash Grove's fabric filter remains one of the best performing fabric filters after its performance is recalculated, we have used the data submitted by the petitioner in the UVF data pool even though it technically is no longer a MACT pool fabric filter.¹³ Nonetheless, the recalculated level of performance (and the variability in

¹⁰ USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Sections 5.3 and 7.4, docket item EPA-HQ-OAR-2004-0022-0453.

¹¹ USEPA, "Draft Technical Support Document for HWC MACT Standards – Reconsideration of the Particulate Matter Standard," January 2006, Section 4.0.

¹² The floor methodology used for particulate matter is explained in "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Sections 5.3 and 7.4, docket item EPA-HQ-OAR-2004-0022-0453.

¹³ We note that two other MACT pool sources with fabric filters achieve emission levels comparable to Ash Grove Chanute but have a higher standard deviation. Thus, Ash Grove's fabric filter performs like a MACT pool fabric filter and should be retained in the UVF analysis. Ash Grove Chanute has an emission average of 0.0038 gr/dscf and a standard deviation of 0.0025, while another cement kiln has an emission average of 0.0034 gr/dscf and a standard deviation of 0.0028, and a liquid fuel boiler has an emission average of 0.0037 gr/dscf and a standard deviation of 0.0043. If we were to delete Ash Grove Chanute from the UVF pool nonetheless, the UVF would change slightly and would result in one additional change

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the new data used to calculate that level) would result in a slight change to the UVF which in turn would result in slight changes to two other particulate matter floors since the UVF was used for all particulate matter standards. The revised floor analysis results for particulate matter are presented in Table 2 below.¹⁴ As shown in the table, only three floor levels would change from levels presented in the final rule. The replacement of the unrepresentative Ash Grove Cement data with the petitioner-submitted data not only changes the particulate matter standard for new cement kilns, but also would result in minor changes to the new source incinerator and new source liquid fuel boiler particulate matter floor levels. We request comment on the revised floor results for particulate matter.

Table 2 – Revised Particulate Matter Floor Levels (gr/dscf at 7% oxygen)

Source Category		October 2005 Final Rule Floor Level	Proposed Floor Level
Incinerators	Existing sources	0.013	0.013
	New sources	0.0015	0.0016
Cement kilns	Existing source	0.028	0.028
	New sources	0.0023	0.0069
Lightweight aggregate kilns	Existing sources ¹	0.025	0.025
	New sources	0.0098	0.0098
Solid fuel boilers ²	Existing sources	0.073	0.073
	New sources	0.061	0.061
Liquid fuel boilers	Existing sources	0.035	0.035
	New sources	0.0087	0.0088

¹ The calculated floor levels in both cases are 0.029 gr/dscf. For reasons discussed in the final rule, we capped calculated floor levels exceeding the Interim Standard at the Interim Standard, which in this case is 0.025 gr/dscf. 70 FR at 59457. Given that the calculated floor level with the revised UVF (i.e., 0.029

to the particulate matter floors—the existing source standard for liquid fuel boilers would change from 0.035 gr/dscf to 0.034 gr/dscf. See USEPA, “Draft Technical Support Document for HWC MACT Standards – Reconsideration of the Particulate Matter Standard,” January 2006, Section 4.3.

¹⁴ For a discussion of how the UVF relationship would be altered and for a presentation of the floor results, see USEPA, “Draft Technical Support Document for HWC MACT Standards – Reconsideration of the New Source Particulate Matter Standard for Cement Kilns,” March 2006, Section 4.0.

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gr/dscf) again slightly exceeds the Interim Standard, we likewise propose to cap the calculated floor level at 0.025 gr/dscf.

² Note that we adopted more stringent beyond-the-floor standards for existing and new sources in the final rule. See docket item EPA-HQ-OAR-2004-0022-0457, Section 14.

For the three calculated new source floor levels that would change from the level promulgated in the final rule, we considered establishing beyond-the-floor standards based on the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements. A complete presentation of the results can be found in the background document supporting this proposal.¹⁵ After considering costs and nonair quality health and environmental impacts and energy effects, we are proposing not to adopt a beyond-the-floor standard based on improved particulate matter control for new source cement kilns, new source incinerators, and new source liquid fuel boilers.

Therefore, we are proposing to revise three of the particulate matter standards as reflected in Table 3 below. We are also proposing accompanying regulatory text changes to 40 CFR 63.1217(b)(7), 63.1219(b)(7), and 63.1220(b)(7)(i).

Table 3 – Proposed Revised Particulate Matter Standards (gr/dscf at 7% oxygen)

Source Category	Source Type	Proposed Standard
Cement kilns	New sources	0.0069
Incinerators	New sources	0.0016
Liquid fuel boilers	New sources	0.0088

C. What Changes to the Compliance Date Provisions Are Being Proposed for the Revised Standards?

We are proposing to revise the compliance date requirements under 40 CFR 63.1206 to require that new cement kilns (i.e., sources that commenced construction or

¹⁵ USEPA, “Draft Technical Support Document for HWC MACT Standards – Reconsideration of the New Source Particulate Matter Standard for Cement Kilns,” March 2006.

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reconstruction after April 20, 2004, the date of the rule proposing the full set of MACT standards for hazardous waste burning cement kilns) comply with the proposed particulate matter standard by the later of the date of publication of the final rule in the *Federal Register* or the date the source starts operations. We note, however, that if we promulgate a particulate matter standard that is more stringent than the proposed standard, the final rule will allow you three years from the date of publication of the final rule to comply with the standard, if you comply with the proposed standard by the later of the date of publication of the final rule in the *Federal Register* or the date the source starts operations. These timelines are consistent with the current compliance date requirements under 40 CFR 63.1206.

Although we are proposing to slightly revise the particulate matter standards for incinerators and liquid fuel boilers that are new sources (i.e., sources that commenced construction or reconstruction after April 20, 2004), we are not proposing to revise the compliance date requirements for those sources. The revised particulate matter standards would be less stringent by only 0.22 mg/dscm (0.0001 gr/dscf), and new sources would be allowed to begin complying with them on the date of publication of the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

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regulatory action" as one that is likely to result in 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, or 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.

Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed rule constitutes a "significant regulatory action" because this action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq because there is no additional burden on the industry as a result of the proposed rule, and the ICR has not been revised.

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Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business

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Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in the field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least

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costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Although our best estimate of total social costs of the final rule was \$22.6 million per year, today's notice does not add new requirements that would increase this cost. See 70 FR at 59532. Thus, today's notice of reconsideration is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the notice of reconsideration contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose

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obligations upon them. Thus, today's proposed rule is not subject to the requirements of section 203.

E. Executive Order 13132: Federalism

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

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule, as proposed, is not projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur at selected States and/or EPA regional offices if these entities experience increased administrative needs or information requests. Thus, Executive Order 13132 does not apply to this rule.

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

Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This notice of reconsideration does not have tribal implications, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this notice of reconsideration.

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

“Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today’s proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under point one of the Order, and because the Agency does not

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have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As described in the October 2005 final rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified the following consensus standards that were considered practical alternatives to the specified EPA test methods: (1) American Society for Testing and

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Materials (ASTM) D6735-01, “Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method,” and (2) American Society of Mechanical Engineers (ASME) standard QHO-1-2004, “Standard for the Qualification and Certification of Hazardous Waste Incineration Operators.” Today’s notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

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List of Subjects in 40 CFR Part 63

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

Stephen L. Johnson,
Administrator.

Dated:

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For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63--NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Section 63.1206 is amended by revising the first sentence of paragraph

(a)(1)(ii)(B)(1) and adding paragraph (a)(1)(ii)(B)(3) to read as follows:

§63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(1) * * *

(ii) * * *

(B) * * * (1) If you commenced construction or reconstruction of your

hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards under §§63.1219, 63.1220, and 63.1221 and the other requirements of this subpart by the later of October 12, 2005 or the date the source starts operations, except as provided by paragraphs (a)(1)(ii)(B)(2) through (3) of this section. * * *

* * * * *

(3) If you commenced construction or reconstruction of a cement kiln after April 20, 2004, you must comply with the new source emission standard for particulate matter under §63.1220(b)(7)(i) by the later of [INSERT DATE OF PUBLICATION OF THE

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FINAL RULE IN THE FEDERAL REGISTER] or the date the source starts

operations.

* * * * *

3. Section 63.1217 is amended by revising paragraph (b)(7) to read as follows:

§63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?

* * * * *

(b) * * *

(7) For particulate matter, except for an area source as defined under §63.2 or as provided by paragraph (e) of this section, emissions in excess of 20 mg/dscm (0.0088 gr/dscf) corrected to 7 percent oxygen.

* * * * *

4. Section 63.1219 is amended by revising paragraph (b)(7) to read as follows:

§63.1219 What are the replacement standards for hazardous waste incinerators?

(b) * * *

(7) Except as provided by paragraph (e) of this section, particulate emissions in excess of 3.7 mg/dscm (0.0016 gr/dscf) corrected to 7 percent oxygen.

* * * * *

5. Section 63.1220 is amended by revising paragraph (b)(7)(i) to read as follows:

§63.1220 What are the replacement standards for hazardous waste burning cement kilns?

(b) * * *

(7) * * *

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(i) Emissions in excess of 15.8 mg/dscm (0.0069 gr/dscf) corrected to 7 percent oxygen; and

* * * * *