ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0080; FRL–9095–2]

RIN 2060–AO98

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for control of hazardous air pollutants (HAP) for the Prepared Feeds Manufacturing area source category. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the generally available control technology or management practices for the area source category.

DATES: This final rule is effective on January 5, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0080. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.index*. Although listed in the index, 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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Jan King, Outreach and Information Division, Office of Air Quality Planning and Standards (C404–05), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5665; fax number: (919) 541–7674; e-mail address: *king.jan@epa.gov*.

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

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I. General Information

A. Does This Action Apply to Me?

The regulated categories and entities potentially affected by the final standards are prepared feeds manufacturers who add chromium compounds or manganese compounds to their product. In general, the facilities potentially affected by the rule are covered under the North American Industrial Classification System (NAICS) code listed in the following table.

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Other Animal Foods Manufacturing	311119	Animal feeds, prepared (except dog and cat), manufacturing.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11619 of subpart DDDDDDD (NESHAP for Area Sources: Prepared Feeds Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where Can I Get a Copy of This Document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). A copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 8, 2010. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings

brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the CAA requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We implemented these requirements through the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT. This is particularly important when developing regulations for source categories, like this one, that have many small businesses, as defined by the Small Business Administration.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to sign final rules establishing emission standards for two source categories listed pursuant to section 112(c)(3) and (k) by December 16, 2009 (*Sierra Club* v. *Johnson*, no. 01–1537, D.D.C., March 2006). We intend to publish a separate rulemaking in the **Federal Register** for the other source category due in December 2009.

III. Summary of Changes Since Proposal

This final rule contains several changes to the proposed rule as a result of public comments. The following sections present a summary of the changes to the proposed rule. We explain the reasons for these changes in detail in the summary of comments and responses (section V of this preamble).

A. Applicability

The final rule applies to any prepared feeds manufacturing facility that produces animal feed products (not including cat and dog feed products) and uses a material containing chromium or a material containing manganese. In light of questions raised concerning the scope of sources covered by this area source rule, we revised several definitions in the rule and added other definitions. The prepared feeds manufacturing area source category is identified by NAICS code 311119, ''Other Animal Food Manufacturing.'' This NAICS code includes establishments primarily engaged in manufacturing animal feed (except dog and cat) from ingredients, such as grains, oilseed mill products, and meat products. The NAICS definition also contains a list of over 40 specific animal feed processes that are included in the NAICS code. First, we added a definition of ''animal feed,'' and defined that term to include all of the products in NAICS code 311119. This definition also clarifies that dog and cat feed products are not considered animal feed, consistent with the NAICS definition. The final rule, therefore, applies not only to ''traditional'' feed products, but also to animal feed ingredients, supplements, premixes, concentrates, and other products included in the definition of NAICS code 311119. Second, we revised the definition of a ''prepared feed manufacturing facility'' to include the concept of ''primarily engaged.'' To meet the definition of a prepared feeds manufacturing facility, a facility must be ''primarily engaged'' in the production of animal feed. We identified that primarily engaged in the production of animal feed means that the animal feed makes up at least half of the facility's annual production of all products. The definition of prepared feed manufacturing facility explicitly states that facilities primarily engaged in feeding animals are not prepared feed manufacturing facilities. We also added definitions for ''a material containing chromium'' and ''a material containing

manganese.'' ''A material containing chromium'' is defined as any material that contains chromium in an amount greater than 0.1 percent by weight, and ''a material containing manganese'' is defined as any material that contains manganese in an amount greater than 1 percent by weight. We added a requirement to provide for the situation where a facility starts using a material containing chromium or manganese after the applicable compliance date. Specifically, facilities that are not subject to the rule but start adding materials containing chromium or manganese in the future become subject to the rule at the time they begin adding these HAP. While the rule does not apply to prepared feeds manufacturing facilities that do not use any materials containing chromium or manganese, we added provisions that make it clear that facilities that stop using all materials containing chromium and manganese at a later date are no longer subject to the rule.

B. Standards and Compliance Requirements

The final rule retains the specific housekeeping management practices discussed in the proposed rule. Those management practices must reduce dust (use industrial vacuum, remove dust from walls and ledges, keep doors shut). The only change we made to these provisions was to require that doors be kept shut except during normal ingress and egress, rather than the proposed requirement to keep doors shut ''as practicable.''

The final rule requires that a device be installed and operated at the loadout end of each bulk loader that loads products containing chromium or manganese to lessen fugitive emissions by reducing the distance between the loading arm and the truck or railcar. This is a change from the proposed requirements, which specified that ''drop filter socks'' be used on bulk loaders.

The final rule requires that emissions from the pelleting process at facilities with an average daily feed production level exceeding 50 tons per day (tpd) be collected and routed to a cyclone designed to achieve 95 percent or greater reduction in particulate matter (PM) emissions. This is a change from the proposed rule, which required a cyclone designed to achieve a 95 percent reduction in particulate matter emissions less than 10 microns in diameter (PM10). To demonstrate that your cyclone is designed to achieve a 95 percent reduction in PM emissions, the final rule provides three different options: (1) Manufacturer's specifications certifying that the cyclone is designed to achieve 95 percent PM reduction, (2) certification by a professional engineer or responsible official that the cyclone is designed to achieve a 95 percent reduction in PM emissions, or (3) a Method 5 performance test to demonstrate that the cyclone can achieve a 95 percent reduction in PM emissions.

The proposed rule required that the pressure drop across the cyclone be monitored to demonstrate that the device was in good condition and operating properly. The final rule expands the monitoring options to include other measures that indicate proper flow through the cyclone. Specifically, the final rule allows monitoring of inlet flow rate, inlet velocity, pressure drop, or fan amperage.

C. Reporting and Recordkeeping Requirements

The final rule requires that all sources that have an average daily feed production level of 50 tpd or less to keep production records. These facilities must also submit their initial average daily feed production level in the Notification of Compliance Status report.

We added recordkeeping and reporting requirements associated with the new options on demonstrating cyclone performance efficiency (certification by professional engineer or responsible official, or testing). We also added provisions that require facilities that discontinue the use of all materials containing chromium and manganese to notify the Agency that they are no longer subject to the rule.

D. Definitions

As discussed above, definitions for animal feed, a material containing chromium, a material containing manganese, and prepared feeds manufacturing facility were added or modified. The definition of filter drop sock was removed, as this term is no longer used in the final rule.

IV. Summary of Final Standards

A. What Are the Applicability Provisions and Compliance Dates?

Subpart DDDDDDD standards apply to each new or existing prepared feeds manufacturing facility that is an area source and uses a material containing chromium or a material containing manganese. A prepared feeds manufacturing facility is a facility where animal feed (as defined in the rule) makes up at least half of the facility's annual production of all products. A material containing chromium is any material that contains chromium in an amount greater than 0.1 percent by weight, and a material containing manganese is any material that contains manganese in an amount greater than 1 percent by weight.

All existing area source facilities subject to this rule are required to comply with the rule requirements no later than January 5, 2012. A new source is any affected source that commenced construction or reconstruction after July 27, 2009. All new sources are required to comply with the rule requirements by January 5, 2010 or upon startup, whichever is later.

Prepared feeds manufacturing facilities that do not use any materials containing chromium or manganese are not subject to this rule. If a facility starts using a material containing chromium or manganese after the applicable compliance date, they will be required to comply at the time that they start using such materials. Also, if a facility stops using all materials containing chromium and manganese, they are no longer subject to the rule and should notify EPA or the delegated authority of the change.

B. What Are the Final Standards?

The final requirements, which apply to all new and existing sources, consist of equipment standards and management practices. There are two general management practices that apply in all areas where materials containing chromium or manganese are stored, used, or handled. The first is to perform housekeeping measures to minimize excess dust that could contain chromium or manganese. The specific measures required by the rule are: (1) Use either an industrial vacuum system or manual sweeping to reduce the amount of dust, (2) at least once per month, remove dust from walls, ledges, and equipment using low pressure air or by other means, and then sweep or vacuum the area, and (3) keep doors shut except during normal ingress and egress.

The second general management practice is the requirement to maintain and operate all process equipment that stores, processes, or contains chromium or manganese in accordance with manufacturers' specifications and in a manner to minimize dust creation.

There are also requirements that are specific to certain areas of the plant or processes at all new and existing sources. These requirements are:

- For the storage area, all raw materials containing chromium or manganese must be stored in closed containers.

• For mixing operations, materials containing chromium or manganese must be added to the mixer in a manner to reduce emissions, and the mixer must be covered at all times when mixing is occurring, except when materials are being added.

• For bulk loading processes where prepared feeds products containing chromium or manganese are loaded into trucks or railcars, you must use a device at the loadout end of each bulk loader to lessen fugitive emissions by reducing the distance between the loading arm and the truck or railcar.

In addition to the above requirements that apply to all facilities, new and existing facilities with average daily feed production levels exceeding 50 tpd are required to install and operate a cyclone to reduce emissions from pelleting and pellet cooling operations. The average daily feed production level means the average amount of prepared feed product produced each operating day over an annual period. The initial determination of the average daily feed production level is based on the one-year period prior to the compliance date for existing sources, or the design rate for new sources. Subsequent average daily feed production levels are then determined annually and are based on the amount of animal feed product produced in the calendar year divided by the number of days in which the production processes were in operation. Facilities with average daily feed production levels of 50 tpd or less are required to submit production information in their Notification of Compliance Status report and keep records documenting their animal feed production levels.

For the pelleting operations at facilities with daily pelleting production levels exceeding 50 tpd, the final rule requires that PM emissions be collected and routed to a cyclone that is designed to achieve 95 percent or greater reduction in PM. There are three ways you can demonstrate that your cyclone is designed to achieve 95 percent reduction in PM: (1) Manufacturer specifications that certifying the cyclone is designed to achieve 95 percent reduction in PM emissions; (2) certification by a professional engineer or responsible official that the cyclone is designed to achieve a 95 or greater percent reduction in PM emissions; or (3) a one-time Method 5 performance test to demonstrate that the cyclone can achieve a 95 percent or greater reduction in PM emissions.

In addition, the final rule requires that you establish an operating parameter range that indicates proper operation of the cyclone and then monitor this parameter at least once per day. The specific parameters allowed to be monitored are inlet flow rate, inlet velocity, pressure drop, or fan amperage. The range that represents proper operation of the cyclone must be provided by the manufacturer, determined as part of the engineering calculations demonstrating the design efficiency, or determined based on monitoring conducted during the performance test.

The final rule also requires that you maintain the cyclone in accordance with manufacturer specifications. If manufacturer specifications are not available, you must develop and follow standard maintenance procedures.

C. What Are the Compliance Requirements?

For all new and existing sources, compliance with the final regulation is demonstrated through installation of the required equipment, adherence to the management practices specified in the rule, and keeping the required records and submitting the required notifications and reports described below.

To ensure that the cyclone for the pelleting and pellet cooling process is operated properly at facilities with average daily feed production levels exceeding 50 tpd, the final rule requires that the cyclone be inspected quarterly for corrosion, erosion, or any other damage that could result in air in-leakage, and that the inlet flow rate, inlet velocity, pressure drop, or fan amperage be monitored and recorded daily to ensure that it is being operated in accordance with specified proper operating range.

The final rule also requires that the devices required at the loadout end of a bulk loader to lessen fugitive emissions by containing the unloaded product within the device be inspected monthly to ensure that they are in good condition.

D. What Are the Notification, Recordkeeping, and Reporting Requirements?

All new and existing sources are required to comply with some requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 1 of the final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Each facility is required to submit an Initial Notification and a one-time Notification of Compliance Status according to the requirements in 40 CFR 63.9 in the General Provisions. The Initial Notification, which is required to be submitted by affected sources not later than May 5, 2010, or 120 days after you become subject to the rule, whichever is later, must contain basic information about the facility and its operations. The Notification of Compliance Status, which is required to be submitted 120 days after the compliance date, must contain a statement that the source has complied with all relevant standards. The Notification of Compliance Status also must include the inlet flow rate, inlet velocity, pressure drop, or fan amperage range that constitutes proper operation of the cyclone used to reduce emissions from the pelleting and pellet cooling operations. Facilities not required to install and operate cyclones on their pelleting operations are required to submit documentation of their initial average daily feed production level.

The final rule requires that records be kept of all notifications of compliance. The rule requires that records be kept documenting each inspection of a cyclone and each inspection of a device at the loadout end of a bulk loader. It also requires that the daily reading of cyclone inlet flow rate, inlet velocity, pressure drop, or fan amperage be recorded. In addition, records are required of any actions taken in response to findings of the inspections or monitoring results outside the proper operating range. Facilities with average daily feed production levels of 50 tpd or less are required to keep records of the annual production and the number of days of operation.

The final rule includes the requirement to prepare, by March 1 of each year, and submit an annual compliance certification, a copy of which will need to be maintained on site. This report must contain a statement of whether the source has complied with all relevant standards and other requirements of the final rule. If a deviation from the standard occurred during the annual reporting period, or if an instance occurred where the cyclone inlet flow rate, inlet velocity, pressure drop, or fan amperage was outside of the proper operating range submitted in the Notification of Compliance Status report, this information is required to be included in the annual report and the report needs to be submitted to the EPA Administrator or the designated authority. All records are required to be maintained in a form suitable and readily available for expeditious review, and kept for at least five years, the first two of which must be onsite.

V. Summary of Comments and Responses

EPA received 16 public comment letters on the proposed rule. Five of these comment letters were requests for an extension to the comment period,[1] leaving 11 comment letters that provided comments on the proposed rule. These comments were received from industry representatives, trade associations, state agencies, and an environmental organization. Sections V.A through V.G of this preamble provide responses to the public comments received on the proposed NESHAP.

A. Rulemaking Process

Comment: Several commenters requested that the comment period be extended by 90 days. The commenters had concerns about the inputs to the impacts analysis and requested additional time to collect and provide factual information to the agency about the proposed rule's provisions and their potential impact.

Response: Due to a court-ordered deadline for promulgation of this rule (which at the time of proposal was November 16, 2009), we were unable to extend the comment period in response to these requests. Moreover, CAA section 307(d) requires that EPA provide a minimum of 30 days for public comment, and we provided that period for public comment. Furthermore, consistent with section 307(d), the proposed rule provided the public an opportunity to request a public hearing, and no party requested such a hearing. *See* 307(d)(5) (record remains open 30 days after the date of the public hearing).

Comment: One commenter expressed their concerns about the process that EPA used to develop its proposed national emission standard for prepared feeds manufacturers. The commenter believes that EPA did not provide ample due process in developing the proposed rule. The commenter pointed out that they requested a 90-day extension to the proposed rule's comment period so that accurate information could be obtained to respond to the assumptions and estimates made by the agency. In this request, the commenter indicated that they highlighted five major areas of the proposed rule in which they believed EPA lacked critical information that directly affects the provisions within the proposed rule and its impact on prepared feeds manufacturers. Since EPA denied their request for extension of the comment period, the commenter indicated that they were left with what they believe was an inappropriately short 30-day comment period to respond to a proposed rule that, if promulgated as drafted, would have very significant operational and economic impacts on prepared feeds manufacturers. While cognizant of EPA's court-ordered mandate to issue this national emission standard, the commenter believes that the agency's actions related to gathering industry information, timing of the proposed rule and its response to their request for extension of the comment period are not indicative of a constructive or meaningful rulemaking process.

Response: EPA complied with the requirements of 307(d) during this rulemaking process. We engaged industry prior to proposal by meeting and by telephone to discuss our rulemaking process and the information we intended to obtain through the 114 survey. EPA strongly disagrees with the commenters' assertion that EPA did not provide ample due process in developing the rule.

CAA 307(d) requires EPA to publish a notice of proposed rulemaking and provide a minimum of 30 days for the public to comment on the proposal, and EPA complied with this requirement. EPA also identified a date for public hearing, if such hearing was requested by any member of the public. No member of the public requested a hearing, and therefore, a public hearing was not held.

In conclusion, we believe that lines of communication with the industry were well established and open throughout the rulemaking process, and that the commenters had ample opportunity to participate.

B. Applicability

Comment: Two commenters stated that the rule should clarify that a prepared feeds manufacturing facility is a facility that produces feeds, and not a facility that manufactures feed ingredients. One of the commenters explained that although feed ingredient companies may predominantly manufacture ingredients for animal feed and be classified under the NAICS Code defining the Prepared Feeds Manufacturing source category (NAICS 311119), they may also produce feed ingredients for human and/or companion animal consumption.

Response: EPA would like to clarify that, in addition to facilities that produce animal feed, facilities that manufacture feed ingredients are part of the prepared feeds manufacturing area source category. The category was identified in the original section 112(k) emissions inventory through the use of the Standard Industrial Classification (SIC) code 2048, Prepared Feeds Manufacturing, except cat and dog feed. As noted by the commenter, the NAICS code that covers this area source category is 311119, which is equivalent to the SIC code used in the original source category definition. The SIC/NAICS code for the source category includes many segments of the prepared feed industry, including the production of feed ingredients. Specifically, in addition to many other segments of the industry, NAICS code 311119, and thus the prepared feeds manufacturing area source category, includes:

- Feed concentrates, animal, manufacturing;
- Feed premixes, animal, manufacturing;
- Feed supplements, animal (except cat, dog), manufacturing;
- Micro and macro premixes, livestock, manufacturing;
- Mineral feed supplements (except cat, dog) manufacturing; and
- Mineral supplements, animal (except cat, dog), manufacturing.

Therefore, since facilities that manufacture feed ingredients are subject to the rule, we did not make the change suggested by the commenter. We did, however, make changes to the applicability provisions and definitions to clarify the various segments of the prepared feeds industry that are included in the source category and, therefore, subject to the rule (provided they use chromium or manganese). These changes include adding a definition of ''animal feed,'' which includes a list of all the products included under NAICS code 311119. While we recognize that chromium and manganese are not used in the production of many of the animal feed products in the definition, we believe that a complete listing eliminates the confusion of what types of processes are included in the source category. We would point out, however, that, even if a facility produces a listed animal feed product (*e.g.,* earthworm feed and bedding), it is not subject to the rule if no chromium or manganese is used.

One of the commenters raised the issue of a facility that produces a product covered by the rule along with other similar products that would not be covered by the rule. Specifically, the commenter mentions a facility that produces animal feed ingredients along with feed ingredients for humans and/or cats and dogs. First, the NAICS code only includes establishments ''primarily engaged in'' manufacturing animal feed.

[1] We denied the requests for extension by letter, copies of which are in the docket. These letters explain the reasons for the denial. These reasons are also provided in section V.A.

We have revised the definition of ''prepared feed manufacturing facility'' to incorporate this concept. Specifically, the final rule contains the following definition.

Prepared feeds manufacturing facility means a facility that is primarily engaged in manufacturing animal feed. A facility is primarily engaged in manufacturing animal feed if the production of animal feed comprises greater than 50 percent of the total production of the facility on an annual basis. Facilities primarily engaged in raising or feeding animals are not considered prepared feeds manufacturing facilities.

Thus, a facility would be a prepared feeds manufacturing facility subject to the rule if the animal feed ingredients (not including ingredients for dog, cat, or human feed) make up more than half of its production. In addition, the final rule specifies that an affected source at a prepared feeds manufacturing facility only includes the collection of equipment and activities necessary to produce animal feed containing chromium or manganese. Therefore, if the ingredients for human and/or dog and cat feed at a facility primarily engaged in manufacturing animal feed were produced in equipment that is never used to produce ''animal feed,'' those production processes would not be part of the affected source and would not be subject to the requirements in the rule. While not specifically mentioned by the commenters, consideration of these applicability issues, along with comments related to the number of facilities in the source category, caused us to clarify that prepared feeds manufacturing at farms and animal feed lots is not part of this source category. Facilities ''primarily engaged'' in raising or feeding animals are listed under different NAICS codes (*e.g.,* 112210—Hog and Pig Farming, 112112—Cattle Feedlots, 112111—Beef Cattle Ranching and Farming) and were not part of the sources that formed the basis for the listing of the prepared feed manufacturing area source category.

Comment: Five commenters stated that the rule should only apply to prepared feeds manufacturing facilities that use or emit chromium compounds or manganese compounds above a specified threshold. The commenters claimed that such an approach would focus attention on facilities that are more significant emitters of chromium and manganese and will avoid requiring extremely small facilities to comply with the rule with little environmental benefit. The commenters suggested several different threshold levels. One commenter recommended a threshold based on established Superfund Amendments and Reauthorization Act of 1986 (SARA) Tier II threshold quantities (10,000 pounds per year), while another suggested 2,000 pounds per year based on levels determined to be insignificant under the title V program. Another commenter noted that Toxics Release Inventory (TRI) regulations require a covered facility to report only if it manufactures or processes non-exempt chromium and/or manganese compounds in quantities exceeding 25,000 pounds per year, and suggested that a threshold be established at this 25,000 pounds per year level. Still another commenter suggested a level of 1,000 pounds per day. One of the commenters recommended that, if such a threshold is established, compounds having a concentration of less than 1 percent of the chromium compounds or manganese compounds need not be counted by a facility when determining whether it has used a sufficient quantity to reach the threshold use level that establishes whether a facility is subject to the rule's provisions.

Response: Although several commenters advocated for a usage threshold for chromium compounds and manganese compounds, below which a facility would be exempt, we are not adopting any exemptions. Prepared Feeds Manufacturing is one of the area source categories needed to meet the section 112(c)(3) requirement that we subject to regulation, (*i.e.,* area source categories representing 90 percent of the emissions of chromium and manganese). We reviewed the listing decision for this area source category and did not identify any information suggesting that small sources were not included in the listing decision. As such, we do not believe we can satisfy our requirement to regulate sources representing 90 percent of the emissions of Prepared Feeds Manufacturing urban HAP unless we subject all sources that emit those HAP to the rule.

We recognize that the Prepared Feeds Manufacturing source category is comprised of a large number of relatively small facilities. Although area sources individually may be considered low-emitting sources, collectively, they are not. The commenter's suggestion fails to address the requirement of section 112(c)(3), and, as discussed above, we previously determined that we need to subject the Prepared Feeds Manufacturing area source category to regulations in order to meet the requirement that EPA regulate area sources accounting for 90 percent of the emissions of the 30 urban HAP.

Comment: One commenter suggested that the applicability be changed to only include facilities that utilize pelletizing operations. The commenter noted that this would more adequately match the original group of prepared feeds manufacturers who were surveyed and those in the same class. The commenter also pointed out that the pelleting and pellet cooling process is the most significant source of pollutants, as it is estimated to emit 90 percent or more of the total chromium and manganese.

Response: The basis for the listing of the area source category was not limited to emissions from pelleting. Thus, we conclude that the applicability should remain as proposed.

C. Emission Standards

1. General

Comment: One commenter stated that EPA based the proposed standard on erroneous and misguided assumptions and estimates of emissions of chromium compounds and manganese compounds. This commenter had numerous objections to the impacts analyses (*see* section V.G) and how these analyses impacted EPA's decision to regulate this category and specific emission points.

Response: In section 112(c)(3) of the CAA, EPA is required to list ''sufficient categories or subcategories of area sources to ensure that area source representing 90 percent of the emissions of the 30 urban HAP are subject to regulation.'' An area source emissions inventory was compiled for each of the 30 urban HAP and the area source categories identified that comprised 90 percent of the emissions of each of these HAP. For the prepared feeds manufacturing source category, this inventory was based on data from the 1990 TRI. The TRI is an EPA inventory of annual emissions self-reported by industry. Based on this information, EPA determined that chromium compounds emissions and manganese compounds emissions from prepared feeds manufacturing area sources needed to be regulated to achieve the 90 percent requirement in CAA section 112(c)(3). Therefore, the decision to regulate emissions of chromium compounds and manganese compounds from the prepared feeds manufacturing industry was based on emissions data *submitted directly by the industry.* The information and analyses referred to by the commenter were prepared to evaluate potential impacts of regulatory options. This information had no bearing on the basic decision to develop regulations for the prepared feeds manufacturing area source category.

The commenter is also incorrect with respect to how emission points were identified for regulation. They assume that the information compiled for the

impacts analyses was used as the basis to identify emission points for regulation. Rather, chromium and manganese emission points were identified primarily based on information submitted directly by the industry. Specifically, we conducted a survey of the industry, and responses were received for over 100 prepared feeds manufacturing facilities. In the responses to this survey, prepared feeds manufacturing facilities identified potential emission sources and reported controls and management practices that were being used. This information formed the basis for the decisions regarding the emission points and process areas for which standards were proposed.

In conclusion, the commenter raised several issues on the impacts analyses (*see* section V.G below). However, the issues associated with these analyses did not influence the basic decision to regulate this source category or the decisions on the specific emission sources that would be regulated.

Comment: One commenter asserted that, ''* * * The legislative history of § 112 explains that Congress intended GACT standards to reflect 'methods, practices and techniques which are commercially available and appropriate for application by sources in the category considering economic impacts and technical capabilities of the firms to operate and maintain emission control systems'.''

The commenter also asserted that, although EPA used its discretion to issue GACT standards and that § 112(d)(5) authorizes EPA to do so, that decision is subject to administrative law requirements. The commenter asserted that EPA's decision is arbitrary and capricious because that decision was not supported with a rational explanation.

Response: As the commenter recognizes, in CAA section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, CAA section 112(d)(5), which is entitled ''Alternative standard for area sources,'' provides:

> With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may,* in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

See CAA section 112(d)(5) (*Emphasis added*).

There are two critical aspects to CAA section 112(d)(5). First, CAA section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to CAA section 112(c). The commenter does not dispute that EPA listed the area source category noted above pursuant to CAA section 112(c)(3). Second, CAA section 112(d)(5) provides that, for area sources listed pursuant to CAA section 112(c), EPA ''*may, in lieu of*'' the authorities provided in CAA section 112(d)(2) and 112(f), elect to promulgate standards pursuant to CAA section 112(d)(5). CAA Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as maximum achievable control technology or MACT). CAA section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. *See* CAA section 112(d)(3).[2] Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' *See* Webster's II New Riverside University (1994). Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards under CAA section 112(d)(5) that provide for the use of GACT, *instead of* issuing MACT standards pursuant to CAA section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under CAA section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to CAA section 112(c), which is the case here.[3]

We disagree with the commenter's assertion that we must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. Had Congress intended that EPA first conduct a MACT analysis for each area source category, Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c), and that is precisely what EPA has done in this rulemaking.

Although EPA has no obligation to justify why it is issuing a GACT standard for an area source category as opposed to a MACT standard, we did explain at proposal that being able to consider costs and economic impacts is important when establishing standards for a category like this with many small sources. Furthermore, EPA must set a GACT standard that is consistent with the requirements of CAA section 112(d)(5) and have a reasoned basis for its GACT determination. As explained in the proposed rule and below. The legislative history supporting section 112(d)(5) provides that GACT is to encompass:

> ''* * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.''

The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category. Congress plainly recognized that area sources differ from major sources, which is why Congress allowed EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not allow that consideration in setting MACT floors for major sources pursuant to section 112(d)(3). This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states, *i.e.*, provide EPA the authority to issue ''alternative standards for area sources.''

Notwithstanding the commenter's claim, EPA properly issued standards for the area source categories at issue here under section 112(d)(5), and in doing so provided a reasoned basis for its selection of GACT for these area source categories. As explained in the proposed rule, EPA evaluated the control technologies and management practices that reduce HAP emissions at Prepared Feeds Manufacturing area source facilities. In its evaluation, EPA used information on pollution

[2] Specifically, CAA section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for which the Administrator has emissions information. CAA Section 112(d)(2) directs EPA to consider whether more stringent emission reductions (so called beyond-the-floor limits) are technologically achievable considering, among other things, the cost of achieving the emission reduction.

[3] CAA Section 112(d)(5) also references CAA section 112(f). *See* CAA section 112(f)(5) (entitled ''Area Sources'' and providing that EPA is not required to conduct a review or promulgate standards under CAA section 112(f) for any area source category or subcategory listed pursuant to CAA section 112(c)(3), and for which an emission standard is issued pursuant to CAA section 112(d)(5)).

prevention from industry trade associations, and reviewed operating permits to identify the emission controls and management practices that are currently used to control volatile and particulate HAP emissions. We also considered technologies and practices at major and area sources in similar categories.

Finally, even though not required, EPA did provide a rationale for why it set a GACT standard in the proposed rule. In the proposal, we explained that the facilities in the source categories at issue are already well controlled for the urban HAP for which the source category was listed pursuant to section 112(c)(3). Consideration of costs and economic impacts proves especially important for the well-controlled area sources at issue in this final action. Given the current, well controlled emission levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for the area source category.

Comment: One commenter questioned why EPA was not considering regulation for all HAP emissions. The commenter explained that, as documented in the record for this rulemaking, that Prepared Feed Manufacturing facilities often generate emissions other than manganese, such as arsenic and arsenic compounds, benzene, beryllium and beryllium compounds, cadmium and cadmium compounds, chlorine, cobalt and cobalt compounds, formaldehyde, hexane, hydrochloric acid, hydrogen fluoride, lead and lead compounds, mercury and mercury compounds, naphthalene, nickel and nickel compounds, polycyclic organic matter, selenium and selenium compounds, and toluene. The commenter acknowledged that management practices and PM controls required by the rule will likely reduce other metal HAP emissions to some degree; however they indicated that the Agency failed to quantify this benefit. The commenter also indicated that EPA should consider controls for other HAPs that will not be co-controlled with the manganese and chromium.

Response: Section 112(k)(3)(B) of the CAA requires EPA to identify at least 30 HAP emitted from area sources that pose the greatest threat to public health in the largest number of urban areas (the ''Urban HAP'') and identify the area source categories emitting such pollutants that are or will be listed pursuant to section 112(c)(3). Section 112(c)(3), in relevant part, provides:

> The Administrator shall * * *, pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section.

Thus, section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 urban HAP are subject to regulation. Section 112(d)(1) requires the Administrator to promulgate regulations establishing emissions standards for each area source category of HAP listed for regulation pursuant to section 112(c).

EPA identified the 30 Urban HAP that posed the greatest threat to public health in the Integrated Urban Air Toxics Strategy (Strategy). In the Strategy and subsequent **Federal Register** notices, EPA listed the area source categories necessary to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B), and one of those categories was the Prepared Feeds Manufacturing area source category.

We have interpreted sections 112(c)(3) and 112(k)(3)(B) together to require EPA to regulate only those Urban HAP emissions for which an area source category is listed pursuant to section 112(c)(3), not all urban HAP or all section 112(b) HAP emitted from a listed area source category. As stated above, section 112(k)(3)(B) addresses the strategy to control HAP from area sources in urban areas and the focus of the strategy as it relates to control of area sources is on the 30 HAP that pose the greatest threat to public health in the largest number of urban areas. Section 112(c)(3) specifically references section 112(k)(3)(B) as the basis for selecting area sources for listing to satisfy the Agency's responsibility for regulating urban HAP emissions from area sources. Under these provisions, area sources categories are listed because they emit one or more of the 30 listed Urban HAP and the Agency has identified the category as one that is necessary to satisfy the requirement to subject area sources representing 90 percent of the area source emissions of the 30 urban HAP to regulation.

EPA listed the Prepared Feeds Manufacturing area source category pursuant to sections 112(c)(3) and 112(k)(3)(B). We must regulate only the chromium and manganese emissions from the Prepared Feeds Manufacturing area source category, as these are the urban HAP emissions for which the category was listed to meet the 90 percent requirement in sections 112(c)(3) and (k)(3)(B). *See* 112(c)(3) (EPA must ''ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants * * * are subject to regulation.''). We recognize that the source category emits other section 112(b) HAP, including other urban HAP; however, as stated above, sections 112(c)(3) and 112(k)(3)(B) do not require the Agency to regulate the area source category for any HAP other than those for which the category was listed. As to the other urban HAP emitted from this category, we have identified other area source categories that emit these urban HAP and subjecting those area source categories to regulation will satisfy the requirement to subject to regulation area sources that account for 90 percent of the area source emissions of those urban HAP.

While the Agency is not required to regulate all section 112(b) HAP from area sources listed pursuant to section 112(c)(3) and 112(k)(3)(B), section 112 of the CAA does not preclude EPA from regulating other HAP from these area sources at our discretion and in appropriate circumstances. Section 112(d)(5) states that, for area sources listed pursuant to section 112(c), the Administrator may, in lieu of section 112(d)(2) ''MACT'' standards, promulgate standards or requirements ''applicable to sources'' which provide for the use of GACT or management practices ''to reduce emissions of hazardous air pollutants.'' This provision does not limit EPA's authority to regulate only those urban HAP emissions for which the category is needed to achieve the 90 percent requirement in sections 112(k)(3)(B) and 112(c)(3). In fact, in two other area source rules, in addition to regulating the urban HAP that were necessary to satisfy the 90 percent requirement in sections 112(k)(3)(B) and 112(c)(3), we regulated additional section 112(b) HAP. Specifically, in the chemical manufacturing area source rule and the paint and allied products area source rule, although not required, we exercised our discretion to regulate other section 112(b) HAP beyond the urban HAP for which the categories were listed under section 112(c)(3) and (k)(3)(B), including non-urban section 112(b) HAP. The chemical manufacturing area source rule and the paints and allied products area source rule both involve specific circumstances which EPA believes justify regulating organic and metal section 112(b) HAP in

addition to the specific urban HAP needed to meet the 90 percent requirement in section 112(c)(3) and (k)(3)(B), which served as the basis for the listing of the categories. In the chemical manufacturing area source rule, which establishes standards for 9 area source categories, we regulated such HAP because the emission standards designed to control the urban HAP for which the categories were listed were equally effective at removing other urban and non-urban metal and organic HAP, and demonstrating compliance for total HAP was less burdensome than demonstrating compliance for speciated HAP for those sources required to install add-on controls. In the paint and allied products area source rule, we included emission standards for HAP beyond the urban HAP for which the category was listed because the emission standards designed to control those urban HAP would also control other urban and non-urban metal and organic HAP.

In conclusion, we believe that we have appropriately exercised our discretion in regulating only the chromium and manganese emissions from the prepared feeds manufacturing area source category. Therefore, we did not make any changes in the final rule based on this comment.

2. Housekeeping Management Practices

Comment: One commenter claimed that the Agency's proposed housekeeping practices are ''overreaching,'' ''unfounded,'' and ''unnecessary.'' The commenter believed that EPA had no basis for correlating housekeeping practices with ambient air concentrations of chromium compounds or manganese compounds.

The commenter also had concerns with regard to two of the specific plant-wide housekeeping requirements proposed. The commenter argued that the requirement that dust be removed from walls, ledges and equipment at least once per month is not performance-orientated and fails to consider individual facility operations or existing management practices. The commenter also disagreed with the Agency's assertion that air flow through open doors 'stirs-up' dust and causes chromium compounds and manganese compounds to be emitted into the atmosphere. Therefore, the commenter opposed the proposed requirement that affected facilities keep doors shut, as practicable. In addition, the commenter also expressed concern over the facilities ability to comply with this requirement as they questioned what would be the parameters set/used to determine that having a door shut is not practicable.

The commenter noted that prepared feeds manufacturing facilities already comply with Occupational Safety and Health Administration's (OSHA) Grain Handling Standard (29 CFR 1910.272) and the Food and Drug Administration's (FDA's) Current Good Manufacturing Practices (CGMPs) for Medicated Feeds (21 CFR part 225), and that they are regularly inspected by Federal and State authorities. Because of this, the commenter believed that EPA's proposed housekeeping practices are unnecessary. The commenter provided more detailed descriptions of these two programs.

> Occupational Safety and Health Administration's (OSHA) Grain Handling Standard (29 CFR 1910.272): This standard requires facilities to ''develop and implement a written housekeeping program that establishes the frequency and method(s) determined best to reduce accumulations of fugitive grain dust on ledges, floors, equipment and other exposed surfaces'' throughout the entire facility. OSHA's housekeeping requirements are performance-oriented, allowing facilities the flexibility to design housekeeping programs to achieve compliance through methods that are most effective for individual facilities and operations.
>
> FDA's Current Good Manufacturing Practices (CGMPs) for Medicated Feeds (21 CFR 225): The vast majority of prepared feed manufacturers are mandated to comply with CGMPs that require buildings and equipment be maintained and kept in a reasonably clean and orderly manner to avoid the potential adulteration of feed products. Regarding this provision, FDA's compliance program guidance states, ''Accumulated dust or residue will be considered objectionable when there is a likelihood that the material could contribute to significant contamination of animal feed.'' Similar to the OSHA requirement, FDA's housekeeping standard also is performance-orientated. The CGMP regulations allow facilities to implement those housekeeping practices that are effective for their individual operations and achieve compliance with the standard.

Another commenter recommended that instead of the specific requirements, facilities be required to maintain a management plan to minimize excess dust. The commenter said that this plan can be maintained on site, available for review by the delegated authority.

Response: The commenter claimed that EPA has no basis for correlating housekeeping practices with ambient air concentrations. Under section 112(k)(3)(B) of the CAA, EPA determined that chromium and manganese were 2 of the 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. Section 112(c)(3) of the CAA requires EPA to list sufficient categories or subcategories of area sources to ensure that there are sources representing 90 percent of the emissions of each of the 30 urban HAP are subject to regulation. We determined that the chromium and manganese emissions from prepared feeds manufacturing area sources need to be subject to regulation to meet this 90 percent requirement for these two HAP. Additionally, under CAA section 112(d)(5), we may elect to promulgate standards that represent GACT. As cited above, the legislative history supporting section 112(d)(5) provides that GACT is to encompass:

> ''* * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.''

Section 112(d)(5) calls for EPA to establish GACT standards that are designed to reduce HAP emissions. Nothing in these provisions requires EPA to justify GACT regulations based on a correlation between ambient concentrations and emissions from a specific emissions source.

We based our GACT determinations on methods, practices, and techniques commonly employed in the prepared feeds manufacturing industry. Based on the available information, we concluded that every prepared feeds manufacturing facility performed general housekeeping practices and maintained equipment in an effort to reduce dust and thus, particulate emissions. We appreciate the information provided by the commenter that confirms this conclusion, along with the details of the regulatory programs that require these measures.

We disagree with the commenter that including GACT housekeeping practices is unnecessary. As noted above, section 112(d)(5) requires EPA to establish national standards. The fact that OSHA and FDA have similar requirements has no relevance here, especially since they allow facilities to establish individual (and potentially dissimilar) standards. Therefore, the final rule maintains specific housekeeping requirements to minimize dust and does not include a requirement to develop site-specific management practices.

As noted above, we had information prior to proposal that made it clear that housekeeping practices to minimize dust were widespread. We concluded that GACT was ''continual housekeeping practices to reduce dust that can contain chromium compounds

and manganese compounds.'' (74 FR 36985) However, we did not have information from a good cross section of the industry on specific practices employed. We solicited information from one of the major prepared feeds manufacturers to identify some specific practices employed in the industry, and included them in the proposed rule. At proposal, we acknowledged the potential limitations of the examples of practices proposed, and specifically requested comment on these measures. We also requested additional general management practices commonly employed throughout the industry.

The commenter expressed concerns with regard to the proposed housekeeping practices, but they were not responsive to our request for additional practices used throughout the industry. While the commenter did not provide any suggestions to address their concerns (other than the suggestion to remove the practices entirely), we recognize the issues raised in the comments provided on the specific management practices and have considered them.

The commenter stated that the requirement that dust be removed from walls, ledges and equipment at least once per month is not performance-orientated and fails to consider individual facility operations or existing management practices. It is clear that all prepared feeds manufacturing facilities must remove dust from walls, ledges, and equipment periodically in order to comply with the OSHA requirement. The commenter did not provide any alternative to the monthly requirement, and our follow-up calls to feed manufacturing facilities indicated that monthly is a reasonable time frame. In fact, these calls show that many areas of the plant are cleaned more frequently than monthly. Therefore, the final rule retains the requirement to remove dust from walls, ledges, and equipment on a monthly basis.

The proposed requirement to keep doors closed was the result of a recommendation from a prepared feeds manufacturer. However, we appreciate the concerns regarding potential compliance confusion with the proposed requirement to keep doors closed ''as practicable.'' Therefore, the final rule states that doors must remain closed ''except during normal ingress and egress.''

Comment: One commenter expressed concern that the general housekeeping requirements would apply to all areas of the affected facility, even though all areas of the affected facility may not be involved with the storage and/or use of chromium compounds or manganese compounds.

Response: We agree with the commenter that there is no need to perform these management practices in areas where chromium or manganese are never present. Therefore, we have changed this language in the final rule to specify that the general management practices apply in ''all areas of the affected source where materials containing chromium or manganese are stored, used, or handled.''

3. Mixers

Comment: One commenter urged the Agency to eliminate the requirement that affected facilities cover the mixer where materials containing chromium compounds or manganese compounds are added at all times when mixing is occurring, except when the materials are being added to the mixer. The commenter suggested that this requirement implies that chromium compounds or manganese compounds are being emitted into the atmosphere directly from the mixer when mixing occurs, and they do not believe that this is true. The commenter stated that if chromium and manganese are released from a mixer, they are captured within the facility in which the mixer is operating and not directly released to the atmosphere. The commenter explained that the facilities themselves are control devices. The commenter claimed that there was a lack of sufficient and compelling data to support a contention that openings in mixers are a source of emissions of chromium compounds or manganese compounds. The commenter believed that the technical background information considered by EPA in this rulemaking produced an unfounded correlation between mixer operation and chromium and manganese emissions. The commenter cited EPA's 2002 National Emissions Inventory (NEI) and noted that the data reviewed indicated no emissions of chromium compounds or manganese compounds from source classification codes 31227 through 31237, which encompass mixing/blending operations at feed manufacturers.

Response: The commenter stated that when chromium compounds or manganese compounds are released from the mixer they are not emitted to the atmosphere because the facilities themselves are control devices. We do not disagree that there may be situations where direct releases to the atmosphere from the mixing operations do not occur. In fact, of the facilities that reported information for mixing in response to our industry survey, over 60 percent indicated that their processes are ''closed'' without direct vents to the atmosphere. However, the general ventilation of the building can allow chromium- and manganese-containing dust from the building to be emitted. Chromium and manganese dust created in the mixer that accumulates in the building could be emitted. Therefore, any measures to reduce the amount of dust in the building impacts emissions. We believe that the proposed measures to reduce dust generation from mixing will result in lower dust levels and, thus, lower emissions.

The commenter further claimed that there was no evidence that openings in mixers are a source of emissions of chromium compounds or manganese compounds, and that the technical background information considered by EPA in this rulemaking produced an unfounded correlation between mixer operation and chromium and manganese emissions. However, we identified mixers as a source of emissions due to information submitted directly by the industry. Specifically, prepared feeds manufacturing facilities identified mixing as a potential emission source and reported associated add-on control devices and management practices in response to our industry survey. We reviewed the material submitted via this survey and agree that it is accurate and representative.

Since some prepared feeds manufacturing facilities reported that emissions from mixing were vented to a control device, we evaluated whether add-on controls were GACT for mixing operations. The commenter is correct that no emissions were assigned directly to mixing in the 2002 NEI. However, we would note that over 60 percent of the manganese emissions in the 2002 NEI, and 90 percent of the chromium emissions, were not assigned to any specific operation, thus raising the possibility that some of these emissions are occurring from mixing operations.

In order to evaluate whether it was cost effective to select add-on control as GACT, it was necessary to make assumptions based on engineering judgment to estimate emissions from mixing. While the commenter may disagree with the assumptions that were used to estimate these emissions, the result was the rejection of add-on control as GACT for mixing.

To reiterate, the emission estimates that the commenter objects to were not a factor in establishing the proposed management practices as GACT. That determination was directly based on the information submitted in response to the survey.

In conclusion, the commenter provided no information to suggest that the proposed measures were not generally available and commonly used by the facilities to reduce chromium- or manganese-containing dust from mixing operations at prepared feeds manufacturing facilities. The commenter also provided no information challenging our conclusion that the costs of the GACT standards in the final rule are reasonable. Therefore, no changes were made to the proposed requirements for mixing.

4. Pelleting and Pellet Cooling

Comment: One commenter supported requiring the option to select add-on control (cyclones) as GACT for facilities that produce less than 50 tpd of prepared feeds. The commenter points out that EPA determined that approximately 20 percent of existing facilities already had cyclones installed, and that the agency estimated that the cost effectiveness of requiring the remaining 80 percent to install controls would be around $1 million per ton of chromium and manganese compound emission reduction, $4,000 per ton of PM emission reduction, and $20,000 per ton of PM2.5 reduction, and that the annual cost of installing and operating a cyclone at one of these facilities would be around $58,000 per year. The commenter recognizes that EPA performed an economic impact assessment, which indicated that these annual costs could represent over 5 percent of the total annual sales for a small facility, and that EPA concluded that ''the adverse economic impacts do not justify a determination requiring cyclones for the small prepared feeds manufacturing subcategory.'' The commenter states that, although this economic impact analysis is more instructive than mere reliance on cost effectiveness figures, the 5 percent of total annual sales threshold is arbitrary. The commenter states that EPA does not explain why the benefits of further reductions in PM, PM2.5, manganese compounds and chromium compounds, as well as other metal HAP emissions, are not sufficient to justify the costs of the controls. The commenter stated their belief that the GACT provision's requirement of cost considerations does not preclude the need to consider the environmental benefits of the proposed rule in determining whether those costs are justified.

Response: As noted by the commenter, we performed an economic impact assessment that indicated that the annual costs for fabric filters for bagging could represent over 5 percent of the total annual sales for a facility with less than 5 employees. We strongly disagree that a decision to reject controls that would result in costs that represent 5 percent of the total annual sales is arbitrary. This 5 percent value was a direct calculation of the small model plant cyclone costs divided by the average shipments per facility for facilities with less than 5 employees. While each GACT decision includes a variety of factors to take into account, we generally consider costs in excess of 3 percent of sales to be significant and potentially economically damaging. Further, since we believe all of the facilities in the small facility subcategory are small businesses, we are even more sensitive to potentially detrimental economic impacts. We also disagree that we did not consider the environmental benefits. For this option, we estimated and considered the emission reductions of chromium, manganese, PM, and PM2.5. However, we determined that these emission reductions are not justified given the economic impacts. In conclusion, we believe our decision to reject the option to require add-on controls for pelleting operations at prepared feed manufacturers with daily production rates of 50 tpd or less is justified.

Comment: Two commenters recommended that, since the 50 tpd production level determines if emissions must be controlled from the pelleting and pellet cooling operations, this level should be related to the amount of feed pelletized and not the total amount of feed produced by the entire facility. One of the commenters indicated that they are aware of several prepared feeds manufacturing facilities that do not pelletize feed, or that only pelletize a small percentage of the feed produced.

Response: Under section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards''. As discussed at proposal (74 FR 36985), we observed differences between prepared feeds manufacturing facilities based on production levels and subcategorized the Prepared Feeds Manufacturing source category into ''small'' and ''large'' facilities. The threshold used to distinguish between these subcategories was an average feed production level of 50 tpd. We then independently determined GACT standards for each subcategory. Therefore, our subcategorization and GACT determinations were based on the separation of facilities according to total feed production levels, not pelleting feed production. Since the change suggested by the commenter is inconsistent with our subcategorization decision and analyses, we retained the proposed definition of the small and large subcategories based on total feed production levels.

Comment: One commenter recommended that the 50 tpy threshold be on an annual, rather than daily, basis. The commenter said that this could be the production level in a calendar year or a rolling 12-month production level. The commenter points out that an annual production level of 13,000 tons per year would be equivalent to 50 tpd, assuming an operating schedule of 260 days per year. The commenter noted that the proposed daily rate did not appear to have any special significance, as it was calculated as an average of annual production. The commenter believed that an annual production rate would achieve the same objectives and would be easier than a daily production rate for facilities and for regulatory agencies to track.

Response: We did not incorporate the commenters' suggestion to change the threshold to an annual basis. In our determination of GACT, the data on the existence of controls were related to daily production levels. To determine an annual threshold from these data would require an assumption regarding the number of days of operation per year. We do not believe that calculating an annual rate based on a ''typical'' production schedule is reflective of varying production schedules that exist in the industry. Therefore, the final rule maintains the daily production level concept. Requiring owners and operators to maintain annual production data and the number of operating days, and then dividing the annual production by the number of operating days is no more difficult or burdensome for facilities or regulatory agencies than the approach recommended by the commenter.

Comment: Two commenters maintained that the pelleting cyclones would not be able to reach the proposed design efficiency of 95 percent for PM10. The commenters believed that this level of efficiency would not be attainable under the conditions of the pelleting process. One commenter suggested the efficiency requirement be changed to 95 percent for total PM (up to 35 micron). The commenter included a chart from a cyclone manufacturer that showed the efficiency in removal of PM10 by a cyclone estimated at 90 percent. The commenter continued that this level would not be expected to be reached under the conditions of the pelleting process with its high moisture and high temperature conditions. The commenter stated that a second control

device such as a baghouse or a wet scrubber would be necessary to reach a capture efficiency of 95 percent for PM10.

Response: In the proposed rule, GACT for the pelleting operation was determined to be the use of a cyclone to control emissions of chromium and manganese. We did not specify GACT as a specific control efficiency, concentration, or operating parameter. However, in order to establish criteria that represent a properly designed, operated, and maintained control device, it was necessary to establish requirements in the proposed rule on how the cyclone is designed and operated. Many respondents to the industry survey stated they use high efficiency cyclones to control the pelleting operations. The result is reduced emissions to the air and the capture of lost product that can be returned to the manufacturing operation.

As a follow up to the industry survey responses, we contacted an industry representative (Docket No. EPA–HQ–OAR–2008–0080–0010) that responded to our survey for several prepared feeds manufacturing facilities and asked about the level of efficiency that would be expected with high efficiency cyclones reported to be used to control the pelleting process. The representatives indicated that today's high efficiency cyclones can be expected to get 99 percent control of particulates, while older ones can be expected to achieve efficiencies in the ''mid 90 percent'' range. While background material gathered prior to proposal from vendors (Docket No. EPA–HQ–OAR–2008–0080–0034) show that high efficiency cyclones should be able to reach the proposed 95 percent efficiency level for PM10, we understand that the conditions of the pelleting process are not optimum. We contacted additional cyclone manufacturers after proposal, and some agreed with the commenters that cyclones designed to achieve 95 percent efficiency level for PM10 for pelleting operations are not available. All of those contacted indicated that many older cyclones still being used in the industry would not meet the proposed 95 percent PM10 design requirement. It was not our intent to force prepared feeds manufacturers to replace older, well designed and properly operating cyclones with new high efficiency cyclones, particularly since the incremental emission reduction would be very low and the costs would be high (our estimates are that the capital cost of a new cyclone is between $50,000 to $100,000). The available information suggests that a 95 percent efficiency design requirement is achievable for total PM. Therefore, we have changed the criterion in the final rule to require cyclones designed to achieve a 95 percent efficiency level for total PM, rather than for PM10.

Comment: A commenter recommended that the final rule provide explicit compliance alternatives to the requirement to operate a 95 percent control efficient cyclone. The commenter cites that other area source NESHAP, such as the Nonferrous Foundry NESHAP (Subpart ZZZZZZ), establish a limit of either 99.0 percent control for PM or an emission limit of 0.01 grains per dry standard cubic foot (gr/dscf). The commenter is concerned that having 95 percent control efficient cyclone as the only compliance option for pelletizing operations would unfairly penalize a facility that has a pelletizing process with low uncontrolled emissions or a facility that uses other control equipment to achieve emissions reductions.

Response: The proposed rule required that emissions from pelleting operations be captured and routed to a cyclone designed to reduce PM10 emissions by 95 percent. The format of the rule is an equipment standard, and the 95 percent criterion is a design value, not an emission limitation. Therefore, there is no penalty for a facility with low uncontrolled emissions, provided that they have a cyclone designed to achieve 95 percent reduction that is operated and maintained properly.

Comment: A commenter requested clarification of whether PM or PM10 emissions is considered a surrogate for HAP emission in the proposed rule. The commenter notes that the proposed rule requires that pelletizing operations at feed preparation facilities with daily production levels greater than 50 tpd be controlled by a cyclone designed to reduce PM10 emissions by 95 percent or greater, and that in several places in the preamble to the proposed rule that EPA indicates that PM emissions will be considered the surrogate for chromium and manganese. The commenter asked whether PM or PM10 is the surrogate pollutant for the proposed rule. The commenter points out that several other area source NESHAP consider PM to be the surrogate pollutant for HAP emissions such as Subpart ZZZZZZ (Aluminum, Copper, Nonferrous Foundries) and Subpart ZZZZZ (Iron and Steel Foundries). The commenter recommends that EPA clarify in the final rule whether the surrogate pollutant is PM or PM10 and include a justification for the choice of surrogate. Further, the commenter recommends that, if EPA elects to use PM10 as the surrogate, EPA evaluate the required control efficiency for the cyclone control equipment.

Response: As stated in the preamble to the proposed rule, PM is the surrogate for chromium and manganese emitted from this source category. However, when specifying compliance conditions, the proposed rule used the measure of collection efficiency of PM10. Due to other comments received (*see* above), the final rule uses PM as the metric for cyclone collection efficiency rather than PM10, which should remove any confusion about the surrogate.

Comment: A commenter notes that the proposed rule requires the owner of a cyclone at a feed preparation facility with a daily production level of greater than 50 tpd to keep a record from the cyclone's manufacturer of the control efficiency. The commenter asks what EPA's expectations are for facilities if the manufacturer's specifications are not available or do not show compliance with the control efficiency? The commenter also asked whether an owner or operator would have the option of demonstrating compliance with the rule by testing the inlet/outlet concentrations of the cyclone for determining the control efficiency. Finally, the commenter asked whether other particulate control devices, such as a baghouse or fabric filter, or control equipment in series, such as a cyclone and a baghouse, would be allowed? The commenter indicated that if these options are allowed that this should be made clear in the final rule.

Response: The commenter asked what EPA's expectations are for facilities in showing compliance with the rule if the cyclone manufacturer's design control efficiency and operating and maintenance procedures are not available. We acknowledge that this could be a problem, and have included in the final rule options for documenting that the cyclone is designed to achieve 95 percent PM reduction. The first option is to obtain certification from the manufacturer, as proposed. Under Option 2, the owner or operator could have a registered professional engineer or responsible official certify that the cyclone is designed in a manner capable of achieving 95 percent or greater PM reduction and keep a record of the information used to make this determination. The third option is to conduct PM testing at the inlet and outlet of the cyclone(s) to demonstrate that an efficiency of 95 percent or greater PM reduction is actually being achieved. If either the certification or testing option is used, the owner or operator would be required to identify

a parameter (inlet flow rate, inlet velocity, pressure drop, or fan amperage) operating range that constitutes proper operation of the device, and develop site-specific cyclone maintenance procedures.

5. Bulk Loading

Comment: Several commenters objected to the proposed requirement that emissions from bulk loading be reduced through the use of drop filter socks. Two of the commenters believe that this is too costly and should not be considered as GACT. One of the commenters explained that, in order to meet the proposed requirements, one of their facilities would need to redesign and purchase equipment for the entire bin and bin loading system and potentially redesign the entire mill, which could cost hundreds of thousands of dollars. Two commenters disagreed with EPA's claim that every facility uses drop filter socks to reduce dust and the loss of product during the loading of railcars and trucks. One of the commenters argued that EPA's conclusion that every affected facility already uses drop filter socks to reduce dust and the loss of product during the loading of railcars and trucks contradicts the background technical information in the docket, which indicates that the use of drop filter socks was reported for around 70 percent of the plants. The commenter noted that they conducted a survey of 41 prepared feed manufacturing companies representing 306 plants to identify how many facilities currently use drop filter socks. The commenter's survey results were as follows:

1. The average number of loading-discharge points is 14.3 per facility.
2. Only 53 percent of the responding industry facilities currently have drop filter socks installed at discharge points where prepared feed products are loaded into trucks or railcars.
3. The estimated average cost to install each drop filter sock is $295.
4. The estimated average annual cost to maintain each drop filter sock is $215.

The commenter indicated that, based on their survey results and the assumption that there would be approximately 6,300 affected facilities, the cost to install drop filter socks at loading discharge points would be $12.5 million for the entire industry, with an annual cost of $9.1 million per year. The commenter notes the stark contrast in these estimates and EPA's claim that the proposed requirement to install drop filter socks would not create additional associated costs for facilities.

Three of the commenters point out other alternative methods that are equally effective in reducing emissions and should be allowed. One commenter explained that many facilities have discharge-loading points that already are designed to limit the distance between the feed-discharge point and the conveyance, thereby minimizing potential dust emissions. All three of these commenters note that many load-out operations are conducted in enclosed areas, which minimizes emissions and eliminates the need for drop filter socks. One of the commenters asked that, if the requirements did not apply to truck load-outs that occur inside a building, EPA should clarify this in the final rule.

Response: At proposal, we determined that filter drop socks (or drop filter socks, as we inadvertently used the terms interchangeably) represented GACT for bulk loading. As evident in the definition of ''filter drop sock,'' we intended that this term represent any ''device at the loadout end of a bulk loader that lessens fugitive emissions by containing the unloaded product within the device thus preventing windblown and drop caused fugitive emissions.'' We are confident in our assumption that every prepared feeds manufacturing facility uses some device that meets the proposed broad definition of filter drop sock. However, these comments make it apparent that the industry recognizes one specific technology as filter drop socks, or drop socks, and that it would not be accurate to assume that every facility utilizes this technology. Therefore, in order to avoid confusion, we have removed the definition of filter drop sock and revised the standard to require that, for the bulk loading process where prepared feeds products containing chromium or manganese are loaded into trucks or railcars, a device must be used at the loadout end of each bulk loader to lessen fugitive emissions. Examples of these devices include drop socks, flexible spouts, and any device that reduces the distance between the loading arm and the truck or railcar to a degree that avoids dust. We believe it is important that these technologies be used for all bulk loaders, whether they are inside or outside. Therefore, this requirement applies to all bulk loaders that load products containing chromium or manganese.

6. Bagging

Comment: One commenter disagreed with the decision to reject add-on controls for emissions from bagging operations based solely on the cost effectiveness of installing and operating those controls. The commenter explained that the Agency's decision was made despite the widespread use of these controls, as around 30 percent of the smaller facilities and over 90 percent of the larger facilities controlled emissions from bagging. The commenter points out that EPA did not disagree or reject the notion that control options are appropriate or that the economic impacts are too great. Rather, the commenter points out that the decision to reject the option was based solely on the cost-effectiveness, and that no economic analysis was performed. The commenter indicated that basing this GACT decision solely on cost effectiveness was unlawful. The commenter stated that the Agency is not directed, under Section 112(d)(5), to set standards based on what the agency believes is cost effective. The commenter noted that the Agency themselves stated, ''GACT must reflect the 'methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts.' 74 FR 36982 (quoting S. REP. NO. 101–228, at 171–72).''

Response: We disagree with the commenter, as we believe that cost effectiveness is an appropriate measure to consider in the evaluation of GACT, and that considering cost effectiveness is not unlawful. We believe that by rejecting add-on controls for bagging operations because the cost effectiveness was ''too high to be considered GACT,'' clearly indicates that we concluded the economic impacts are too great. In the preamble to the proposed rule (74 FR 36986), we presented the estimates for both sizes of facilities. For the facilities with daily production levels of 50 tpd or less, the estimates were over $7 million for the total capital costs and over $16 million per year for the total annual costs, resulting in cost effectiveness estimates for these controls of around $255 million per ton of chromium and manganese reduction, over $750,000 per ton of PM emission reduction, and $3.3 million per ton of PM2.5 reduction. For the facilities with daily production levels greater than 50 tpd, the estimates were over $10 million for the total capital costs and over $13 million per year for the total annual costs, resulting in cost effectiveness estimates of around $37 million per ton of chromium and manganese reduction, over $100,000 per ton of PM emission reduction, and around $500,000 per ton of PM2.5 reduction. Therefore, no changes were made as a result of this comment.

D. Inspections and Compliance Provisions

Comment: Two commenters stated that monitoring pressure drop would not be the best way to ensure the proper functioning of the pelleting cyclones. The commenters noted that, due to high moisture conditions (always near dew point) of the dust laden air passing through the cyclones on the pellet cooler air system, accurately measuring the pressure drop is problematic. The commenters stated that moisture and particulates in the duct (especially those ''upstream'' of the collectors) will constantly compromise the accuracy of the static pressure indicating equipment. Secondly, the commenters state that the collectors are quite inaccessible and would require remote readouts, which add to the cost and maintenance of this equipment. One commenter believed the best way to ensure the proper functioning of their collectors is to simply monitor the amp-load of the fan. The commenter states that if the amp-load on the fan motor stays within the proper range then the system is functioning properly. The commenter also stated that, in their operation, the cyclones are located between the cooler and the fan and the duct work is fully contained and sealed. According to the commenter, consequently, all the air that is discharged from the fan has passed through the collectors. The commenter stated that, additionally, the fans on their cooler air systems are electrically interlocked with the pelleting system (*i.e.,* the pellet mill feeder will not operate unless the fan is operating); consequently, if the pelleting system is operating, the fan will be operating and the continuous monitoring of the fan amps will ensure the collectors are operating in the proper range.

One of these commenters believed that the cost to industry to install pressure-drop gauges and to monitor cyclone pressure drop would be extremely high. According to the commenter, given the limited time provided by EPA to respond to this proposed requirement, they were unable to receive actual price quotes from vendors on the cost to install a pressure-drop gauge on a cyclone at various types of facilities. The commenter anticipated that such prices could vary depending upon a facility's equipment and physical layout. However, according to the commenter, based upon best estimates from vendors, they believed that an average conservative cost to install a pressure-drop gauge is $1,500 to $2,000 per cyclone. This commenter suggested that the rule be revised to include alternative management practices and equipment controls as follows:

1. Pellet cooling cyclones are to be operated in accordance with the parameters authorized by air-operating permits issued by appropriate legal authorities.
2. Pellet cooling cyclones are to be maintained and operated in accordance with the manufacturer's recommendations.
3. Once per day, affected facilities are to perform a visual inspection of the operating cyclone and the discharge air stream to observe emissions.
4. Should an affected facility observe an emission discharge that is not in accordance with the parameters authorized within its air-operating permit, corrective actions are to be taken immediately to correct the discharge and bring it into compliance with its air-operating permit. The details of such occurrences, if any, are to be recorded in the facility's maintenance records as required by rule's recordkeeping and notification requirements.

Response: We believe that it is necessary to have a reasonably frequent indication that the cyclones are operating properly. Cyclones are relatively simple devices and generally have no moving parts. A cyclone uses an induced draft fan to move the gas stream through the device. These fans are sized to provide the maximum inlet velocity possible for high separation without excessive turbulence. The primary indicators of the performance of cyclones are the outlet opacity and inlet velocity.

The commenter suggested the use of outlet opacity to monitor performance; however, monitoring outlet opacity would require that trained off-site contractors be used, or more likely, that individuals at the plant be trained and certified in determining opacity using Method 9. We have estimated that a single Method 9 test by an off-site contractor costs around $2,000. While the costs to train and certify on-site employees to perform these required daily tests would result in costs less than $2,000 per day, we still believe that the cost of using outlet opacity as an indicator of performance would be too high. Therefore, we elected to require monitoring which provides an indication of inlet velocity. Pressure drop across the cyclone is a surrogate for inlet velocity, and, contrary to the commenters' claims, it is an appropriate measure to indicate proper operation of a cyclone. Many cyclone manufacturers link the design efficiency with a specific pressure drop. However, other parameters are appropriate surrogates for the inlet velocity. In particular, monitoring either inlet flow rate, inlet velocity, or fan amperage are acceptable alternatives to monitoring pressure drop. As a result of these comments, we have added alternatives to the final rule that allow an owner or operator to monitor pressure drop on a daily basis, or monitor either the inlet flow rate, inlet velocity, or amperage load to the fan, on a daily basis to show that the cyclone is performing consistent with its design specifications. The commenter did not provide any information to support their estimated costs of monitoring equipment.

One of the commenters suggested that cyclones be operated in accordance with parameters authorized by operating permits issued by appropriate legal authorities. We disagree with the commenter's suggested approach. As an initial matter, section 112(d)(5) requires that the Administrator establish national emission standards. To assure compliance with these national emission standards, EPA develops monitoring, recordkeeping and reporting requirements, as it did in this rule. Indeed, one of the reasons supporting EPA's exemption of the prepared feed manufacturing area source category from the requirements of title V is that this rule contains sufficient monitoring, recordkeeping and reporting requirements to assure compliance with the requirements of the final rule. Thus, section 112 contemplates not only that EPA will establish national emission standards, but that EPA will establish appropriate monitoring, recordkeeping and reporting requirements to assure compliance with those requirements. Furthermore, the monitoring and other compliance provisions in State permits can vary considerably, and some prepared feeds manufacturing facilities may not even have permits. If a source would like to use an alternative monitoring approach allowed by a state permit, it should follow the requirements of 40 CFR 63.8(f). Therefore, we reject the commenter's suggestion to remove any specific monitoring requirements from the rule.

Comment: Two commenters expressed concern over the frequency of record keeping for the pelleting control devices. One of these commenters suggested that weekly, rather than daily, pressure drop readings would be adequate. This commenter stated that, while a monthly maintenance check on the cyclone is a reasonable requirement, daily pressure drop readings are excessive because the pressure drop readings would not be expected to vary widely. The commenter also noted that

many cyclones are installed in areas that are not easily accessible so daily checks can be time consuming to collect data that they describe as a ''maintenance indicator.'' The other commenter stated that weekly recording of readings would be adequate and that daily recordkeeping was ''overkill'' (although the commenter provided justification for reduced recordkeeping specific to a baghouse rather than the proposed requirement for a cyclone).

Response: We proposed using the maintenance indicator of pressure drop in order to ensure that the cyclones are operating correctly as an indicator of compliance with the rule that can be readily checked by an inspector. As discussed above, the final rule includes the option to daily monitor inlet flow rate, inlet velocity, pressure drop, or fan amperage. By providing multiple options to indicate compliance, we believe the facility will find an option that can be completed from an accessible area. Daily readings of these parameters are considered appropriate because, while a cyclone may be a rather simple control device in terms of moving parts, the system of ductwork and fans impact the efficiency of the unit. Each cyclone is designed for a specific inlet velocity in order to maximize the collection efficiency. We believe that daily checks are necessary to ensure the ductwork is not entraining outside air and/or that the fan is operating in the designed manner. As a result, we have not changed the requirement for daily monitoring and recording of cyclone performance measures.

Comment: A commenter also asked that the rule specify which cyclone is expected to have a pressure drop gauge installed in cases where multiple cyclones are installed in a line. Specifically, would pressure drop monitoring be required for the initial cyclone, subsequent cyclones, or all cyclones?

Response: The answer is dependent on the design reduction efficiency of the cyclones. If one cyclone in a series is designed to achieve 95 percent or greater PM removal, then monitoring would only be necessary for that one device. However, if the design efficiencies for all the individual cyclones in the series are less than 95 percent, but the combined design efficiency is 95 percent or greater, then the inlet flow rate, inlet velocity, pressure drop, or fan amperage for all the cyclones would need to be monitored.

Comment: One commenter recommended that the Agency consider revising the proposed monitoring to specify that the pressure drop must be monitored at least once per day *when the cyclone is in operation.*

Response: We agree with the concept of this comment. However, we want to make clear that the cyclone is required to be used at all times when the pelleting process is in operation. Therefore, the rule has been revised to state that monitoring of the cyclone operating parameters is required at least once per day when the pelleting process is in operation.

E. Reporting and Recordkeeping Requirements

Comment: One commenter stated that § 63.11619(e)(1) of the proposed rule indicated that facilities that do not add any materials containing chromium or manganese compounds are not subject to the rule. The commenter interpreted this to mean that facilities that do not use chromium- or manganese-containing materials would be excluded from all aspects of the NESHAP, including the requirement to submit an Initial Notification. However, the commenter noted that, during the August 4, 2009 webinar (Docket Item No. EPA–HQ–OAR–2008–0080–44), it was suggested that these facilities would be required to submit an initial notification. The commenter indicated that it seems unnecessary to require submittal of initial notification from facilities that do not use chromium or manganese compounds, and requested that EPA clarify whether this report is required of these facilities.

Response: The commenter's interpretation is correct. Facilities that do not add any materials containing chromium or manganese to any product manufactured at the facility are not subject to the rule, including the requirement to submit an initial notification.

Comment: One commenter recommended that the proposed requirement to submit an annual compliance certification report be omitted from the final rule. The commenter said that annual reporting is burdensome and difficult for small businesses to do year after year. The commenter believes that annual reporting creates excessive paperwork for the facility and the delegated authority with little environmental benefit. The commenter also recommended that the monthly record certifying that a facility has complied with the dust minimization management practices be omitted, as they believe it is very excessive.

Response: Provided that the facility is in compliance, this annual compliance certification report only needs to indicate that compliance has been achieved. In the event that a noncompliance event has occurred, this report will need to provide information about this event. We believe it is important that there is clear accountability regarding compliance with the regulation, and we believe that this is best accomplished by having a responsible official certify that the facility has complied with the requirements in the rule. We disagree with the commenter that this once per year report is difficult and overly burdensome. Therefore, the final rule has retained the requirement to submit annual certification reports.

However, we considered the commenter's request regarding the monthly certifications and have determined that they are not necessary. We believe that accountability can be maintained via the annual certifications and required records. Therefore, the proposed requirement to keep a monthly record certifying compliance with the management practices was not maintained in the final rule.

Comment: One commenter pointed out that the proposed rule did not require a facility to keep records to show that it was below or above the 50 tpd production level that determines whether controls are required for emissions from the pelleting and pellet cooling operation. The commenter also noted that the rule did not explain what happens when a facility with a daily production level less than 50 tpd increases production such that they would have a daily production level greater than 50 tpd. The commenter recommended that provisions be added to eliminate these deficiencies.

Response: We agree with the commenter, and added recordkeeping and reporting requirements related to the average daily feed production level. We also clarified how this level is to be determined. The final rule specifies that the initial determination of the average daily feed production level is based on the one-year period prior to the compliance date for existing sources, or the design rate for new sources. The final rule also requires that facilities with average daily feed production levels below 50 tpd report their initial average daily feed production level in their Notification of Compliance Status report. These facilities would be required to maintain average daily feed production level records to demonstrate that they do not exceed the 50 tpd threshold in the future. At the end of each calendar year, the facility will be required to re-calculate the average daily feed production level for the previous year. If the average daily feed

production level exceeds 50 tpd, the facility would have to comply with the requirement to collect emissions from the pelleting and pellet cooling operations and route them to a cyclone by July 1 of that year.

Prepared feed mill owners or operators with average daily feed production levels less than 50 tpd that elect to comply with the requirement to collect emissions from the pelleting and pellet cooling operations and route the emissions to a cyclone would not be required to maintain production records.

F. Definitions

Comment: Three commenters suggested that the EPA establish definitions for chromium compounds and manganese compounds. One of the commenters suggested using criteria consistent with that found within the Agency's TRI reporting requirements, and noted that these regulations state that: (1) Chromium compounds and manganese compounds are exempt from the TRI reporting requirements when the concentration of such chemicals is less than 1 percent of the total compound; and (2) such an exemption applies whether the facility received or produced the compound. One of the other commenters pointed out that, in other area source NESHAP, materials containing HAP are defined as materials that contain chromium in amounts greater than 0.1 percent by weight or manganese in amounts greater than 1.0 percent by weight. The commenter cited the definition of ''Material containing MFHAP'' in § 63.1522 (40 CFR part 63, subpart XXXXXX) as an example.

Response: The commenters are confusing two concepts. A ''chemical compound'' is a basic chemistry term to indicate a substance composed of two or more elements united chemically in definite proportions by mass. Therefore, any chemical compound containing the element chromium would be a ''chromium compound.'' For example, chromic oxide, chromium trioxide, and potassium chromate are all chromium compounds. Similarly, any compound containing the element manganese is a ''manganese compound.'' Manganese dioxide and manganese chloride are examples of manganese compounds. In the CAA, ''chromium compounds'' and ''manganese compounds'' two of the 30 Urban HAP. *See* Integrated Air Toxics Strategy; *see also* CAA 112(b). Therefore, any chemical compound that contains chromium or manganese is considered a HAP. We do not believe that it is necessary to add language in the rule to explain this standard chemistry terminology.

However, we agree with the commenter that the addition of definitions of ''a material containing chromium'' and ''a material containing manganese'' are appropriate. As we have pointed out in several other area source rulemakings, the CAA section 112(k) inventory was primarily based on the 1990 TRI, and that is the case for the Prepared Feeds Manufacturing source category as well. The reporting requirements for the TRI do not include de minimis concentrations of toxic chemicals in mixtures; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. *See* 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the percentages noted above define the scope of the listed source category; they are not exemptions.

Therefore, we believe that it is also appropriate to incorporate this into the prepared feeds manufacturing area source NESHAP. Specifically, we have added the following definitions to the final rule:

A *material containing chromium* means a material that contains chromium (Cr, atomic number 24) in amounts greater than or equal to 0.1 percent by weight.

A *material containing manganese* means a material that contains manganese (Mn, atomic number 25) in amounts greater than or equal to 1.0 percent by weight.

We also revised the applicability provisions in § 63.11619(a) to specify that the rule applies to prepared feeds manufacturing facilities that use a material containing chromium or a material containing manganese and is an area source of emissions of HAP.

Comment: One commenter suggested that the EPA add the following definition for prepared animal feeds: ''a mixture of ingredients and supplements fortified with essential minerals, intended to be fed directly to animals to meet or exceed total daily nutrient requirements.'' The commenter also suggested that the definition of prepared feeds manufacturing facility be changed to specify that the feeds produced must be ''fortified with essential minerals.''

Response: As discussed earlier in section B, the prepared feeds area source category extends beyond those facilities manufacturing only products intended to be fed directly to animals. Additionally, this definition is not consistent with the NAICS code that forms the basis for this source category. Therefore, we did not incorporate the changes suggested by the commenter.

Comment: One commenter requested that drop filter sock should be defined and that it needs to specify the materials of construction and how far into the railcar or truck it needs to extend. Another commenter recommended that the Agency amend the term ''drop filter sock'' to ''drop sock, since the device does not filter potential emissions in any manner.''

Response: As discussed in section V.C.5, we have eliminated the use of the term ''filter drop sock'' in the final rule. Therefore, this definition has been removed.

G. Impacts Assessment

Comment: One commenter believes that EPA's estimated number of prepared feeds manufacturers affected by the proposed rule is inaccurately low. The commenter points out that EPA states that approximately 1,800 area-source prepared feed manufacturing facilities currently operating add chromium compounds or manganese compounds to their products and therefore would be subject to the proposed area source standards. In contrast, the commenter believes that the actual number of affected facilities exceeds 6,300. The commenter notes that the FDA's bovine spongiform encephalopathy inspection database currently lists more than 6,300 feed mills in which FDA has conducted inspections. The commenter points out that the actual number of facilities subject to the proposed rule has a direct impact on the agency's stated benefits and costs of the rule.

Response: We agree that the number of facilities subject to the rule is a key component in the assessment of impacts. Ideally, we would not only have an estimate of the number of facilities in a source category for which we are developing regulations, but we would also have a list of those facilities. During our information gathering efforts, it was clear that the industry was not well represented in the two national emissions databases (TRI and NEI) that we typically use to characterize an industry and their emissions. We also did not identify any other source of information that would provide a list of specific prepared feed manufacturing facilities in the U.S. Therefore, we based our estimate of 1,800 prepared feed manufacturing facilities on the 2002 U.S. Economic Census of Manufacturers. Prior to proposal, we consulted with the commenter on this topic, and the commenter agreed that 1,800 was a reasonable estimate. However, we appreciate that the commenter has now obtained other information that they believe indicates

that the number of facilities may be higher than originally estimated. We investigated the FDA inspections database mentioned by the commenter and found that this database includes many more types of facilities than just prepared feed mills. The FDA Web site says the following: ''Inspections of renderers, feed mills, ruminant feeders, protein blenders, pet feed manufacturers, pet feed salvagers, animal feed distributors and transporters, ruminant feeders, and others have been conducted to determine compliance with the BSE/Ruminant Feed regulations.'' Clearly this includes many types of facilities that are not in the Prepared Feeds Manufacturing area source category.

Facilities in the Prepared Feeds Manufacturing Source Category are classified under NAICS 311119, which includes ''establishments primarily engaged in manufacturing animal food (except dog and cat) from ingredients, such as grains, oilseed mill products, and meat products.'' The proposed applicability of the rule was taken directly from this NAICS definition, except that it limited applicability to those animal feed manufacturers that use chromium or manganese. The 2002 U.S. Economic Census of Manufacturers reports 1,567 establishments under NAICS 311119. The census reports 1,811 establishments under the broader NAICS 31111. While NAICS 31111 likely includes establishments that would not be included in the source category, we chose to place our estimate of the number of prepared feed facilities at 1,800 to be conservative. As noted above, we sought input on this estimate and the commenter deemed it as a ''reasonable estimate'' (Docket No. EPA–HQ–OAR–2008–0080–0010).

The commenter did not provide any explanation why the Census data were incorrect for these NAICS codes. The commenter also did not provide evidence that establishments counted under other NAICS codes would be subject to the rule. As discussed in section V.B, we revised the applicability provisions to ensure that it is clear that the rule only applies to the types of facilities that formed the basis for the source category listing. Since this listing was based on NAICS 311119, and no evidence has been submitted that the Census information for NAICS is incorrect, we did not change our estimate of the population of prepared feed manufacturing facilities in the U.S.

Comment: One commenter pointed out that data reported within the TRI, which were used as a basis for EPA's baseline emission estimates, are not solely an indication of emissions to the atmosphere. The commenter stated that, by definition, the reported release may result from spilling, leaking, pouring, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of the reported chemical into the environment.

Response: The commenter is correct that a variety of types of releases are reported in the TRI. However, for our analysis, we only used releases reported as ''Fugitive Air Emissions'' and ''Point Source Air Emissions.'' Therefore, we disagree with the comment, as these releases clearly represent an indication of emissions to the atmosphere.

Comment: One commenter expressed concerns about the methodology used to estimate emission levels of chromium compounds, manganese compounds, and total PM. The commenter stated their belief that this analysis lacked a sound statistical basis, and that the baseline emission estimates and corresponding estimated potential emission reductions used by EPA within its proposed rule are erroneous and do not support EPA's proposed management practices and equipment controls.

In particular, the commenter believed that it was inappropriate to extrapolate the chromium compound and manganese compound emissions for the entire industry based on average emission rates from only 22 facilities represented in EPA's 2006 TRI. The commenter pointed out that this problem was exacerbated by the fact that only a fraction of these 22 facilities reported emissions of chromium or manganese compounds. Further, the commenter also stated that facilities reporting the majority of these emissions produce trace mineral premixes subsequently used by other feed manufacturers, and that they do not have pelleting operations, which EPA identifies as the largest emission source at prepared feed mills.

With regard to the estimated PM emissions, the commenter indicated that they believe that the average PM emission level calculated from the NEI was inaccurate. In particular, the commenter believes that the 70 facilities in the NEI with PM emissions represent a number of the highest production volume feed manufacturers in the United States. Therefore, the commenter states that using the average PM emissions for these larger facilities significantly overestimates the PM emissions for the entire industry.

Response: The information questioned by the commenter was considered by EPA in the selection of GACT. As discussed above in section V.D, this information did not impact the decision to regulate chromium and manganese from the prepared feeds source category or the decision which emission sources to regulate. Further, the emission reductions estimated by this analysis were only one of the considerations that make up the GACT decision.

With regard to the specific concerns offered by the commenter, the technical memorandum describing the estimation of baseline emissions discussed the lack of facility-specific emissions data for the prepared feeds industry. Given this lack of data, the approach selected was to develop ''model plants'' to represent the industry. The use of model plants with ''average'' parameters is a sound technical approach that EPA has long used when facility-specific information is not available for the entire industry. Therefore, we reject the argument by the commenter that the use of average emission levels is inappropriate.

However, we do recognize the concerns of the commenters with regard to the specific average emission levels utilized and the manner in which they were created. For instance, the average chromium compound emission level was based on a single facility's emissions in the 2006 TRI, and the average manganese compound emissions level was based on emissions from eight facilities. The commenter did not provide any suggestions on how to improve the analysis using the existing or other readily available information. However, in light of the concerns, we reexamined the available data and the approaches used.

After this review, relatively significant changes were made to five specific areas of our impacts analysis. Each of these is discussed below. There is a technical memorandum in the docket that discusses these changes further and presents the detailed updated results.

1. Changes to Analyses

Percentage of Industry in Small Facility Subcategory. The proposal analysis estimated the number of prepared feed manufacturing facilities with average daily feed production values of 50 tpd or less based on information submitted by the industry in response to an EPA questionnaire. Around 11 percent of the facilities responding to this questionnaire had daily production levels of 50 tpd or less. Following the completion of the baseline emissions and impacts analyses, EPA conducted an economic impact analysis. As part of this analysis, EPA collected detailed data from the 2002 Economic Census of Manufacturers that broke down the

industry based on the number of employees. This information suggested that the profile of the industry based on the industry questionnaire responses may have been biased slightly toward larger facilities (*i.e.*, a larger percentage of the industry would have average daily feed production rates of 50 tpd or less than originally estimated). Therefore, this new information was used, along with correlation between production and revenues provided by a commenter, to reassess this profile. The revised analyses assume that 29 percent of the facilities in the industry have average daily feed production levels of 50 tpd or less.

Number of Facilities Emitting Chromium. In the proposal analysis, it was assumed that every facility in the industry added chromium-containing nutrients to their products. However, in response to follow-up questions asked by EPA on their public comments, the industry trade organizations stated that: ''The use of chromium compounds among feed manufacturers is not as prevalent as the use of manganese compounds. Until a recent FDA-approval for use in dairy feeds earlier this year, chromium compounds had been approved for use only in swine feeds. Only about 2 to 3 percent of feed mills in the U.S. use a chromium compound, and only two compounds, chromium proprionate and chromium tripicolinate, are approved by FDA for use in swine feed.'' Based on this information, the revised impacts analysis assumes that only 3 percent of the prepared feed manufacturing facilities in the United States use and emit chromium.

Facility Average Chromium and Manganese Emission Rates. Because the national databases considered prior to proposal contained data for such a limited number of prepared feed manufacturing facilities, a model plant approach was used to estimate nationwide emissions and impacts for the source category. This model plant approach used facility average emission levels from the 2006 Toxics Release Inventory (TRI) for chromium and manganese. The commenter criticized the development of average emission rates from such a limited data set. To broaden the data set, TRI data were obtained for every facility reporting NAICS code 311119 and/or SIC 3048 for the years 1990 through 2007. There were over 10,000 facilities reporting these NAICS/SIC codes over these 18 years, averaging just over 570 facilities per year. On average, there were 134 facilities reporting manganese emissions each year and 2 reporting chromium. These data were used to calculate new facility average manganese and chromium emission rates, which were used in the revised analyses.

Production Level To Calculate PM Emission Factor. In the proposal analyses, the facility average PM emission rate from the 2002 NEI for emission sources after the point in the process when chromium or manganese would be added was divided by the average production rate from the facilities that responded to the EPA questionnaire to obtain an emission factor in units of tons per year PM emissions per tpd production level. The commenter indicated that this average production level used, 177 tpd, was not representative of the facilities in the NEI. They ''conservatively estimated that the average production that occurred at those facilities listed in the 2002 NEI exceeded 500 tpd.'' In the revised analysis, the PM emissions factor was calculated based on the production level of 500 tpd provided by the commenter.

Cyclone Efficiency for $PM_{2.5}$. The impacts analysis for the proposed rule assumed that cyclones would achieve a 95 percent reduction efficiency for $PM_{2.5}$. An efficiency chart provided by a commenter shows cyclone efficiencies of approximately 30 percent for $PM_{2.5}$. This value was used in the revised analysis.

2. Summary of Revised Results

The results of the revised impacts analysis showed a decrease in the PM emissions and increases in the manganese, chromium, and $PM_{2.5}$ emissions. The revised emissions levels prior to the implementation of this regulation are 8.2 tons per year of chromium, 195 tons per year of manganese, around 11,000 tons per year of both PM and $PM_{2.5}$.

The revised analysis also shows higher levels of chromium and manganese emission reductions and lower levels of both PM and $PM_{2.5}$ reductions. Since the costs were not impacted by the changes to the analyses, the cost effectiveness of the controls were lower for the chromium and manganese and higher for the PM and $PM_{2.5}$. Cost effectiveness values are discussed further in the revised impacts memo which is in the docket. Based on the comments, we did change the impacts, but none of these conclusions affect our choice of GACT.

H. Title V Requirements

Comment: Several commenters agreed with the proposed title V permit exemption, noting such factors as the adequacy of existing state programs to ensure compliance, the additional economic and other burdens imposed by title V permitting, and the lack of technical resources to comply with permitting requirements for facilities that are mostly small businesses.

Response: We acknowledge the commenters' support for the exemption from title V permitting requirements in this rule.

Comment: One commenter argued that the agency's proposal to exempt the area source category from title V requirements is unlawful and arbitrary. The commenter states that section 502(a) of the CAA authorizes EPA to exempt area source categories from title V permitting requirements if the Administrator finds that compliance with such requirements is ''impracticable, infeasible or unnecessarily burdensome.'' 42 U.S.C. 7661a(a). The commenter notes that EPA did not claim that title V requirements are impracticable or infeasible for the source category it proposes to exempt, but that EPA instead relied entirely on its claim that title V would be ''unnecessarily burdensome.''

Response: Section 502(a) of the CAA states, in relevant part, that:

> * * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations. *See* 42 U.S.C. section 7661a(a).

The statute plainly vests the Administrator with discretion to determine when it is appropriate to exempt non-major (*i.e.*, area) sources of air pollution from the requirements of title V. The commenter correctly notes that EPA based the proposed exemptions solely on a determination that title V is ''unnecessarily burdensome,'' and did not rely on whether the requirements of title V are ''impracticable'' or ''infeasible'', which are alternative bases for exempting area sources from title V.

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are ''impracticable, infeasible *or*

unnecessarily burdensome.'' *See* CAA section 502 (emphasis added). If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word ''and,'' in place of ''or''.

Comment: One commenter stated that, in order to demonstrate that compliance with title V would be ''unnecessarily burdensome,'' EPA must show, among other things, that the ''burden'' of compliance is unnecessary. According to the commenter, by promulgating title V, Congress indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter maintained that the title V requirements provide many benefits that Congress viewed as necessary. Thus, in the commenter's view, EPA must show why, for any given category, special circumstances make compliance unnecessary. The commenter believed that EPA has not made that showing for the category it proposes to exempt.

Response: EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. *See* CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. *See* 70 FR 75320, December 19, 2005 (''Exemption Rule''). In addition to interpreting the term ''unnecessarily burdensome'' and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).[4]

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' *See* 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

The commenter asserts that ''EPA must show * * * that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the July 27, 2009 proposed rule for the category at issue in this rule. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the source category for which we proposed title V exemption. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the July 27, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking.[5]

Furthermore, we believe that the commenter's position that ''EPA must show * * * that the 'burden' of compliance is unnecessary'' is unreasonable and contrary to Congressional intent concerning the applicability of title V to area sources. Congress intended to treat area sources differently under title V, as it expressly authorized the EPA Administrator to exempt such sources from the requirements of title V at her discretion. There are several instances throughout the CAA where Congress chose to treat major sources differently than non-major sources, as it did in CAA section 502. Moreover, although the commenter espouses a new interpretation of the term 'unnecessarily burdensome' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are 'unnecessarily burdensome' for an area source category, the commenter does not explain why EPA's interpretation of the term 'unnecessarily burdensome' is arbitrary, capricious or otherwise not in accordance with law. We maintain that our interpretation of the term 'unnecessarily burdensome' in section 502, as set forth in the Exemption Rule, is reasonable.

Comment: One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and

[4] In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. *See* 72 FR 15254–15255, March 25, 2005. As discussed in the proposed rule and below, after conducting the four-factor balancing test and determining that title V requirements would be unnecessarily burdensome on the area source categories at issue here, we examined whether the exemption from title V would adversely affect public health, welfare and the environment, and found that it would not.

[5] If the commenter objected to our interpretation of the term ''unnecessarily burdensome'' in the Exemption Rule, it should have commented on, and challenged, that rule. Any challenge to the Exemption Rule is now time barred by CAA section 307(b). Although we received comments on the title V Exemption Rule during the rulemaking process, no one sought judicial review of that rule.

to be able to use that information in enforcement actions and in public policy decisions on a state and local level. The commenter stated that Congress did not think that enforcement by states or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations and practices of the state in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that, likewise, it is difficult or impossible for citizens to bring enforcement actions. The commenter continued that EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same ability to obtain compliance and emissions information about sources in the category it proposes to exempt without title V permits. The commenter also said that, likewise, EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same enforcement ability. Thus, according to the commenter, the exemption EPA proposes plainly eliminates benefits that Congress thought necessary. The commenter claimed that to, justify its exemption, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the category it proposes to exempt. The commenter concluded that EPA does not even acknowledge these benefits of title V, far less explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response: Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with substantial evidence that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. Moreover, EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502 is reasonable.

EPA reasonably applied the four factors to the facts of the category at issue in this rule, and the commenter has not identified any flaw in EPA's application of the four factor test to the area source category at issue here. Moreover, as explained in the proposal, we considered implementation and enforcement issues in the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. *See* 70 FR 75326.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that state-delegated programs are sufficient to assure compliance with the NESHAP and that States must have adequate programs to enforce section 112 requirements and provide assurances that they will enforce the NESHAP before EPA will delegate the program. In addition, EPA retains authority to enforce this NESHAP under the CAA. *See* 74 FR 36988. The commenter does not challenge the conclusion that there are adequate state and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with this NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. The commenter does not, however, provide any information that States will treat information submitted under these NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, which we dispute, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of these NESHAP.

Furthermore, the fourth factor is one factor that we evaluated in determining if the title V requirements were unnecessarily burdensome. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemption at issue in this rule.

Comment: One commenter explained that title V provides important monitoring benefits, and, according to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for the category. The commenter said that in its proposal EPA proposed to require ''continuous parameter monitoring and periodic recording of the parameter for the required control device to assure compliance. 74 FR at 36987.'' The commenter further states that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the requirements of the proposed rule. Id.'' The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter stated that, for this reason as well, its claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and its exemption is unlawful and arbitrary and capricious.

Response: As noted in the earlier comment, EPA used the four-factor test to determine if title V requirements were unnecessarily burdensome. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source categories. *See* 74 FR 36987. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. *See* 70 FR 75323.

The commenter asserts that ''EPA argues that its proposed standard, by including these requirements, 'provides monitoring sufficient to assure

compliance with the proposed rule.' *See* Fed Reg. 74 At 36987.'' In the proposal, we stated:

The proposed rule requires direct monitoring of control device parameters, recordkeeping that also may serve as monitoring, and deviation and other annual reporting to assure compliance with the requirements.

The monitoring component of the first factor favors title V exemption. For the management practices, this proposed standard provides monitoring in the form of recordkeeping that would assure compliance with the requirements of the proposed rule. Monitoring by means other than recordkeeping for the management practices is not practical or appropriate. Records are required to ensure that the management practices are followed. The rule requires continuous parameter monitoring and periodic recording of the parameter for the required control device to assure compliance. The proposed rule requires the owner or operator to record the date and results of periodic control device inspections, as well as any actions taken in response to findings of the inspections. *See* 74 FR 36987.

As the above excerpt states, we required continuous parameter monitoring and periodic records of the parameter for new and existing affected sources when the rule requires the installation of such controls. This monitoring is in addition to the recordkeeping that serves as monitoring for the management practices. The commenter does not provide any evidence that contradicts the conclusion that the proposed monitoring requirements are sufficient to assure compliance with the standards in the rule.

Based on the foregoing, we considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring, recordkeeping and reporting requirements in this area source rule can assure compliance.

For the reasons described above and in the proposed rule, the first factor supports exempting this area source category from title V requirements. Assuming, for arguments sake, that the first factor alone cannot support the exemption, the four-factor balancing test requires EPA to examine the factors in combination and determine whether the factors, viewed together, weigh in favor of exemption. *See* 74 FR 36987. As explained above, we determined that the factors, weighed together, support exemption of the area source categories from title V.

Comment: One commenter believes that EPA cannot justify exempting the source from title V by asserting that compliance with title V requirements poses a ''significant burden.'' According to the commenter, regardless of whether EPA regards the burden as ''significant,'' the Agency may not exempt a category from compliance with title V requirements unless compliance is ''unnecessarily burdensome.'' Or in the commenter's words, that ''the compliance burden is especially great.'' The commenter stated that in any event, EPA's claims about the alleged burden of compliance are entirely conclusory and could be applied equally to any major or area source category; therefore, the commenter claims that EPA has not justified why this source category should be exempt from title V permitting as opposed to any other category.

Response: The commenter appears to take issue with the formulation of the second factor of the four-factor balancing test. Specifically, the commenter states that EPA must determine that title V compliance is ''unnecessarily burdensome'' and not a ''significant burden,'' as expressed in the second factor of the four-factor balancing test.

As we have stated before, we found the burden placed on the prepared feed manufacturing area source category in complying with title V requirements is unnecessarily burdensome when we applied the four-factor balancing test. We did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in this rule. As explained above, we maintain that the Agency's interpretation of the term ''unnecessarily burdensome,'' as set forth in the Exemption Rule and reiterated in the proposal to this rule, is reasonable.

In applying the four-factor test, we properly analyzed the second factor, *i.e.,* will title V permitting impose a significant burden on the area source, and will that burden be aggravated by any difficulty that the source may have in obtaining assistance from the permitting agency. *See* 74 FR 36988. EPA found that the sources would have a significant burden because we estimated that the average cost of obtaining and complying with a title V permit in general was $65,700 per source for a 5-year permit period. 74 FR 36988. In addition, EPA found that most of the sources affected by this rule are small businesses. Small businesses often lack the technical resources to comply with the permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. EPA found that not only is the individual cost of permitting significant for this source category (*i.e.,* $65,700) but also that the cost to this source category with approximately 1,800 sources as a whole is significant. Furthermore, given the number of affected sources in this source category (*i.e.,* approximately 1,800), it would likely be difficult for them to obtain assistance from the permitting authorities. These specific factors for the affected sources alone justify that EPA has properly exempted the source category from title V. However, as discussed in the proposal and above, EPA analyzed all of the four factors in making its determination that these sources should be exempt from title V permitting requirements; and we found that the totality of these factors weighs heavily in favor of the exemption.

Comment: According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 36988). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in this NESHAP, would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response: The commenter takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition of title V permit requirements is unnecessarily burdensome for the prepared feeds manufacturing area source category. The commenter also mischaracterizes the first of the four-factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts. While EPA recognizes that requiring a title V permit offers additional compliance options, the statute provides that EPA must assess whether compliance with title V would be unnecessarily burdensome to the specific area sources at issue. For the source category subject to this rulemaking, EPA concluded that requiring title V permits would be unnecessarily burdensome.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of ''whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.'' Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

The monitoring, recordkeeping and reporting requirements in the rule are sufficient to assure compliance with the requirements of this rule, consistent with the goal of title V permitting. For example, in the Initial Notification, the source must include information about the facility and its operations. The source must also certify how it is complying and that it has complied with the required management practices and associated recordkeeping requirements. The source must further certify that it has installed controls, if necessary to meet the final standards and that it is monitoring the controls, as required by the final rule and keeping all necessary records regarding the inspections of the controls and any corrective actions taken as a result of seeing changes in the operation of the control equipment. *See* section 63.11624 in the final rule. The source must also keep records and conduct inspections to document that it is complying with the management practices finalized in this rule. *See* section 63.11624 in the final rule. The source must monitor and demonstrate cyclone performance efficiency and, if applicable, must begin corrective action and record the specifics about the corrective action upon seeing any deviation in the pressure drop or fan amperage in the control equipment. The source must also submit deviation reports to the permitting agency in the annual report if there has been a deviation in the requirements of the rule. *See* section 63.11624 in the final rule. EPA believes that these requirements in the rule itself provide sufficient basis to assure compliance with the final emission standards, and does not believe that the title V requirements, if applicable to these sources, would offer significant improvements in the compliance of the sources with the rule.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination. Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA must view the costs of title V permitting requirements, considering any improvement in compliance above what the rule requires. EPA reviewed the area source category at issue and determined that the vast majority of the approximately 1,800 sources that would be subject to the rule currently do not have a title V permit. As stated in the proposal, EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. *See* Information Collection Request for Part 70 Operating Permit Regulations, 72 FR 32290, June 12, 2007, EPA ICR Number 1587.07. Based on this information, EPA determined that there is a significant cost burden to the industry to require title V permitting for all the sources subject to the rule. In addition, in analyzing factor one, EPA found that imposition of the title V requirements offers no significant improvements in compliance. In considering the third factor, we stated in part that, ''Because the costs of compliance with title V are so high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports the proposed title V exemptions for this area source category.'' *See* 74 FR 36988. Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the prepared feeds manufacturing area source category. EPA found it reasonable after considering all four factors to exempt this source category from the permitting requirements in title V. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the source category at issue here, the comments provide no basis for the Agency to reconsider its proposal to exempt this area source category from title V.

Comment: According to one commenter, ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter said that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, however, the Agency's argument boils down to the claim that it generally views title V requirements as unnecessary. The commenter stated that, while this may be EPA's view, it was not Congress' view when Congress enacted title V, and a general view that title V is unnecessary does not suffice to show that title V compliance is unnecessarily burdensome.

Response: The commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. In any event, as explained above, we believe the Agency's interpretation of the term ''unnecessarily burdensome'' is a reasonable one. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. EPA believes that these programs will be sufficient to assure

compliance with the rule. EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source.

The commenter argues that EPA cannot exempt this area source category from title V permitting requirements because ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary'' (emphasis added). As an initial matter, EPA cannot exempt major sources from title V permitting. 42 U.S.C. 502(a). As for area sources, the standard that the commenter proposes—that EPA must show that ''title V compliance is unnecessary''—is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome for the source category at issue.

Furthermore, we disagree that the basis for excluding the area source prepared feeds manufacturing category from title V requirements is generally applicable to any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the source category at issue in this rule. For example, in assessing whether the costs of requiring the sources to obtain a title V permit was burdensome, we concluded that because the vast majority of the sources did not have a title V permit, the costs imposed on the source category were significant compared to the additional compliance benefits offered by the title V permitting process.

Comment: One commenter stated that the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. *See* 74 FR 36988. Nonetheless, according to the commenter, EPA does not make any showing that its exemption would not have adverse impacts on health, welfare and the environment. The commenter stated that, instead, EPA offered only the conclusory assertion that ''the level of control would remain the same'' whether title V permits are required or not 74 FR 36988–89. The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons given above, and therefore EPA's claims about public health, welfare and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: To assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA's proposed rule deprives the public—would improve compliance with the underlying standards and thus have benefits for public health, welfare and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again simply rests on its own apparent belief that they are never necessary. The commenter concluded that, for the reasons given above, the attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response: Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' *See* CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome'', as requiring consideration of the four factors discussed above. EPA applied these four factors to the area source category subject to this rule and concluded that requiring title V for this area source category would be unnecessarily burdensome. In addition to determining that title V would be unnecessarily burdensome on the prepared feed manufacturing area source category, EPA also considered whether exempting the area source category would adversely affect public health, welfare or the environment. As explained in the proposal preamble, we concluded that exempting the area source category at issue in this rule would not adversely affect public health, welfare or the environment because the level of control would be the same even if title V applied. We further explained in the proposal preamble that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information that exemption of this area source category from title V will adversely affect public health, welfare or the environment.

VI. Impacts of the Final Standards

We project that the baseline PM emissions from the estimated 1,800 facilities in the prepared feeds source category are approximately 11,000 tons/yr, with approximatley 11,000 tons/yr of $PM_{2.5}$, 195 tons/yr of manganese and just over 8 tons/yr of chromium. We believe that management practices are already being implemented throughout the industry. Therefore, we do not expect any additional reductions in chromium compound, manganese compound, or general PM emissions from these measures. We estimate that the requirement to install cyclones on the pelleting processes at the facilities with average daily feed production levels exceeding 50 tpd will result in emission reductions of around 1,100 tons/yr of PM, 100 tons/yr of $PM_{2.5}$, and approximately 20 tons/yr of manganese and chromium emissions. While cyclones do remove PM from the air stream, these solids are typically recycled back to the process. Therefore, we do not anticipate any significant indirect or secondary air impacts of this rule as proposed. In addition, we do not expect any non-air health, environmental, or energy impacts.

As noted above, we believe all prepared feed manufacturing facilities already implement the proposed management practices. Therefore, there will be no additional costs for these measures. We estimate that the nationwide capital costs for the installation of cyclones on the pelleting cooling operations at the large facilities will be around $2.5 million. The associated annual costs are estimated to be just over $3 million/year.

Many of the plants in this analysis have fewer than 500 employees, which is the threshold to be considered ''small'' by the Small Business Administration. It is currently estimated that under 2 percent of the facilities (26 facilities) in the category would potentially need to install new cyclones under the proposed regulatory alternative. The potential impact on the industry as a percentage of the value of shipments is small. Under the proposed regulatory alternative, the largest potential impact is estimated as 0.96 percent of shipments for a subset of firms with an overall impact of 0.94 percent of shipments for the industry as a whole. As a result, this action is not expected to have a significant impact on

a substantial number of small entities or the economy as a whole, regardless of whether or not the firms in the industry are able to pass along any increases in their costs to the consumers.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2354.02.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This NESHAP requires Prepared Feeds Manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 27,000 labor hours per year at a cost of $1.7 million or approximately $980 per facility.

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 regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found 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 its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule is estimated to impact a total of almost 1,800 area source prepared feeds manufacturing facilities. We estimate that all these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 0.004 percent for the estimated 26 facilities that would not initially be in compliance. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next three years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce such impact. The standards represent practices and controls that are common throughout the prepared feeds manufacturing industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed in consultation with small business representatives on the State and national level and the trade associations that represent small businesses.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. This rule is not expected to impact State, local, or Tribal governments. The nationwide annualized cost of this rule for affected industrial sources is around $3 million/yr. Thus, this rule would not be subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

This final rule would also not be subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would not apply to such governments and would impose no obligations upon them.

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, as specified in Executive Order 13132. This rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule imposes no requirements on Tribal governments; thus, Executive Order 13175 does not apply to this action.

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

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

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

This final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. Existing energy requirements for this industry would not be significantly impacted by the additional controls or other equipment that may be required by this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use technical standard Method 5 of 40 CFR part 60, Appendix A in the National Emissions Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing—40 CFR part 63, subpart DDDDDDD.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule establishes national standards for the Prepared Feeds Manufacturing area source category; this will reduce HAP emissions, therefore decreasing the amount of emissions to which all affected populations are exposed.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on January 5, 2010.

List of Subjects in 40 CFR Part 63

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

Dated: December 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Part 63 is amended by adding subpart DDDDDDD to read as follows:

Subpart DDDDDDD—National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing

Applicability and Compliance Dates

Sec.
63.11619 Am I subject to this subpart?
63.11620 What are my compliance dates?

Standards, Monitoring, and Compliance Requirements

63.11621 What are the standards for new and existing prepared feeds manufacturing facilities?
63.11622 What are the monitoring requirements for new and existing sources?
63.11623 What are the testing requirements?
63.11624 What are the notification, reporting, and recordkeeping requirements?

Other Requirements and Information

63.11625 What parts of the General Provisions apply to my facility?
63.11626 Who implements and enforces this subpart?
63.11627 What definitions apply to this subpart?
63.11628—63.11638 [Reserved]

Tables to Subpart DDDDDDD of Part 63

Table 1 to Subpart DDDDDDD of Part 63—Applicability of General Provisions to Prepared Feeds Manufacturing Area Sources

Subpart DDDDDDD—National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing

Applicability and Compliance Dates

§ 63.11619 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a prepared feeds manufacturing facility that uses a material containing chromium or a material containing manganese and is an area source of emissions of hazardous air pollutants (HAP).

(b) The provisions of this subpart apply to each new and existing prepared feeds manufacturing affected source. A prepared feeds manufacturing affected source is the collection of all equipment and activities necessary to produce animal feed from the point in the process where a material containing chromium or a material containing manganese is added, to the point where the finished animal feed product leaves the facility. This includes, but is not limited to, areas where materials containing chromium and manganese are stored, areas where materials

containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer the feed materials throughout the manufacturing facility.

(1) A prepared feeds manufacturing affected source is existing if you commenced construction or reconstruction of the facility on or before July 27, 2009.

(2) A prepared feeds manufacturing affected source is new if you commenced construction or reconstruction of the facility after July 27, 2009.

(3) A collection of equipment and activities necessary to produce animal feed at a prepared feeds manufacturing facility becomes an affected source when you commence using a material containing chromium or a material containing manganese.

(c) An affected source is no longer subject to this subpart if the facility stops using materials containing chromium or manganese.

(d) This subpart does not apply to the facilities identified in paragraphs (d)(1) and (2) of this section.

(1) Prepared feeds manufacturing facilities that do not add any materials containing chromium or manganese to any product manufactured at the facility.

(2) Research or laboratory facilities as defined in section 112(c)(7) of the Clean Air Act (CAA).

(e) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11620 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by no later than January 5, 2012.

(b) If you own or operate a new affected source, you must achieve compliance with the applicable provisions of this subpart by January 5, 2010, or upon startup of your affected source, whichever is later.

(c) If you own or operate a facility that becomes an affected source in accordance with § 63.11619 after the applicable compliance date in paragraphs (a) or (b) of this section, you must achieve compliance with the applicable provisions of this subpart by the date that you commence using a material containing manganese or a material containing chromium.

(d) If the average daily feed production level exceeds 50 tons per day for a calendar year for a facility not complying with the requirement in § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations, you must comply with § 63.11621(e) and all associated requirements by July 1 of the year following the one-year period.

Standards, Monitoring, and Compliance Requirements

§ 63.11621 What are the standards for new and existing prepared feed manufacturing facilities?

You must comply with the management practices and standards in paragraphs (a) through (f) of this section at all times.

(a) In all areas of the affected source where materials containing chromium or manganese are stored, used, or handled, you must comply with the management practices in paragraphs (a)(1) and (2) of this section.

(1) You must perform housekeeping measures to minimize excess dust. These measures must include, but not be limited to, the practices specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) You must use either an industrial vacuum system or manual sweeping to reduce the amount of dust;

(ii) At least once per month, you must remove dust from walls, ledges, and equipment using low pressure air or by other means, and then sweep or vacuum the area;

(iii) You must keep doors shut except during normal ingress and egress.

(2) You must maintain and operate all process equipment in accordance with manufacturer's specifications and in a manner to minimize dust creation.

(b) You must store any raw materials containing chromium or manganese in closed containers.

(c) The mixer where materials containing chromium or manganese are added must be covered at all times when mixing is occurring, except when the materials are being added to the mixer. Materials containing chromium or manganese must be added to the mixer in a manner that minimizes emissions.

(d) For the bulk loading process where prepared feed products containing chromium or manganese are loaded into trucks or railcars, you must use a device at the loadout end of each bulk loader to lessen fugitive emissions by reducing the distance between the loading arm and the truck or railcar.

(e) For the pelleting operations at prepared feeds manufacturing facilities with an average daily feed production level exceeding 50 tons per day, you must capture emissions and route them to a cyclone designed to reduce emissions of particulate matter by 95 percent or greater. You must also comply with the provisions in paragraphs (e)(1) through (3) of this section.

(1) You must demonstrate that the cyclone is designed to reduce emissions of particulate matter by 95 percent or greater using one of the methods specified in paragraphs (e)(1)(i) through (iii) of this section.

(i) Manufacturer specifications;

(ii) Certification by a professional engineer or responsible official; or

(iii) A performance test conducted in accordance with § 63.11623 of this section.

(2) You must establish an inlet flow rate, inlet velocity, pressure drop, or fan amperage range that represents proper operation of the cyclone in accordance with the applicable requirement in paragraphs (e)(2)(i), (ii), or (iii) of this section.

(i) If you demonstrate the cyclone design efficiency using manufacturer specifications in accordance with paragraph (e)(1)(i) of this section, the inlet flow rate, inlet velocity, pressure drop, or fan amperage range that represents proper operation of the cyclone must be provided by the manufacturer.

(ii) If you demonstrate the cyclone design efficiency using certification by a professional engineer or responsible official in accordance with paragraph (e)(1)(ii) of this section, this certification must include calculations to establish an inlet flow rate, inlet velocity, pressure drop, or fan amperage range that represents proper operation of the cyclone.

(iii) If you demonstrate the cyclone design efficiency using a performance test in accordance with paragraph (e)(1)(iii) of this section, you must monitor the inlet flow rate, inlet velocity, pressure drop, or fan amperage during the test and establish a range that represents proper operation of the cyclone based on the data obtained during the test.

(3) You must maintain and operate the cyclone in accordance with manufacturer's specifications. If manufacturer's specifications are not available, you must develop and follow standard maintenance and operating

procedures that ensure proper operation of the cyclone.

§ 63.11622 What are the monitoring requirements for new and existing sources?

(a) If you own or operate an affected source required by § 63.11621(d) to use a device at the loadout end of a bulk loader that reduces fugitive emissions from a bulk loading process, you must perform monthly inspections of each device to ensure it is in proper working condition. You must record the results of these inspections in accordance with § 63.11624(c)(4) of this subpart.

(b) If you own or operate an affected source required by § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations, you must comply with the inspection and monitoring requirements in paragraphs (b)(1) and (2) of this section.

(1) You must perform quarterly inspections of the cyclone for corrosion, erosion, or any other damage that could result in air in-leakage, and record the results in accordance with § 63.11624(c)(5)(ii).

(2) You must monitor inlet flow rate, inlet velocity, pressure drop, or fan amperage at least once per day when the pelleting process is in operation. You must also record the inlet flow rate, inlet velocity, pressure drop, or fan amperage in accordance with § 63.11624(c)(5)(iii).

§ 63.11623 What are the testing requirements?

(a) If you are demonstrating that the cyclone required by § 63.11621(e) is designed to reduce emissions of particulate matter by 95 percent or greater by the performance test option in § 63.11621(e)(1)(iii), you must conduct a test in accordance with paragraph (b) of this section and calculate the percent reduction in accordance with paragraph (c) of this section.

(b) You must use Method 5 in Appendix A to part 60 to determine the particulate matter mass rate at the inlet and outlet of the cyclone. You must conduct at least three runs at the cyclone inlet and three runs at the cyclone outlet. Each run must have a sampling time of at least 60 minutes and a sample volume of at least 0.85 dscm (30 dscf).

(c) You must calculate the percent particulate matter reduction using Equation 1.

$$PM\ RED = \left(\frac{M_{INLET} - M_{OUTLET}}{M_{INLET}} \right) x\,100 \qquad \text{Equation 1}$$

Where:

PM RED = particulate matter reduction, percent;

M_{INLET} = Mass of particulate matter at the inlet of the cyclone, dry basis, corrected to standard conditions, g/min;

M_{OUTLET} = Mass of particulate matter at the outlet of the cyclone, dry basis, corrected to standard conditions, g/min;

§ 63.11624 What are the notification, reporting, and recordkeeping requirements?

(a) *Notifications.* You must submit the notifications identified in paragraphs (a)(1) and (2) of this section.

(1) *Initial Notification.* If you are the owner of an affected source you must submit an Initial Notification no later than May 5, 2010, or 120 days after you become subject to this subpart, whichever is later. The Initial Notification must include the information specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The name, address, phone number and e-mail address of the owner and operator;

(ii) The address (physical location) of the affected source;

(iii) An identification of the relevant standard (*i.e.,* this subpart); and

(iv) A brief description of the operation.

(2) *Notification of Compliance Status.* If you are the owner of an existing affected source, you must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions on or before May 4, 2012. If you are the owner or operator of a new affected source, you must submit a Notification of Compliance Status within 120 days of initial startup, or by May 4, 2012, whichever is later. If you own or operate an affected source that becomes an affected source in accordance with § 63.11619(b)(3) after the applicable compliance date in § 63.11620 (a) or (b), you must submit a Notification of Compliance Status within 120 days of the date that you commence using materials containing manganese or chromium. This Notification of Compliance Status must include the information specified in paragraphs (a)(2)(i) through (iv) of this section.

(i) Your company's name and address;

(ii) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart;

(iii) If you own or operate an affected source required by § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations, the inlet flow rate, inlet velocity, pressure drop, or fan amperage range that constitutes proper operation of the cyclone determined in accordance with § 63.11621(e)(2).

(iv) If you own or operate an affected source that is not subject to the requirement in § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations because your initial average daily feed production level was 50 tpd or less, documentation of your initial daily pelleting production level determination.

(b) *Annual compliance certification report.* You must, by March 1 of each year, prepare an annual compliance certification report for the previous calendar year containing the information specified in paragraphs (b)(1) through (b)(6) of this section.

(1) Your company's name and address.

(2) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart.

(3) If the source is not in compliance, include a description of deviations from the applicable requirements, the time periods during which the deviations occurred, and the corrective actions taken.

(4) Identification of all instances when the daily inlet flow rate, inlet velocity, pressure drop, or fan amperage is outside range that constitutes proper operation of the cyclone submitted as part of your Notification of Compliance Status. In these instances, include the time periods when this occurred and the corrective actions taken.

(5) If you own or operate an affected source that is not subject to the requirement in § 63.11621(e) to install

and operate a cyclone to control emissions from pelleting operations because your average daily feed production level was 50 tpd or less, notification if your average daily feed production level for the previous year exceeded 50 tpd.

(6) If you own or operate an affected source that was subject to the requirement in § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations, notification if your average daily feed production level for the previous year was 50 tpd or less and that you are no longer complying with § 63.11621(e).

(c) *Records.* You must maintain the records specified in paragraphs (c)(1) through (5) of this section in accordance with paragraphs (c)(6) through (8) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart in accordance with paragraph (a) of this section, and all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted.

(2) You must keep a copy of each Annual Compliance Certification prepared in accordance with paragraph (b) of this section.

(3) For each device used to comply with the requirements in § 63.11621(d), you must keep the records of all inspections including the information identified in paragraphs (c)(3)(i) through (iii) of this section.

(i) The date, place, and time of each inspection;

(ii) Person performing the inspection;

(iii) Results of the inspection, including the date, time, and duration of the corrective action period from the time the inspection indicated a problem to the time of the indication that the device was replaced or restored to operation.

(4) For each cyclone used to comply with the requirements in § 63.11621(e), you must keep the records in paragraphs (c)(4)(i) through (v) of this section.

(i) If you demonstrate that the cyclone is designed to reduce emission of particulate matter by 95 percent or greater by manufacturer's specifications in accordance with § 63.11621(e)(1(i), you must keep the records specified in paragraphs (c)(4)(i)(A) through (C) of this section.

(A) Information from the manufacturer regarding the design efficiency of the cyclone,

(B) The inlet flow rate, inlet velocity, pressure drop, or fan amperage range that represents proper operation of the cyclone,

(C) The operation and maintenance procedures to ensure proper operation of the cyclone.

(ii) If you demonstrate that the cyclone is designed to reduce emissions of particulate matter by 95 percent or greater by certification by a professional engineer in accordance with paragraph § 63.11621(e)(1)(ii), you must keep the records specified in paragraphs (c)(4)(ii)(A) through (C) of this section.

(A) Certification regarding the design efficiency of the cyclone, along with supporting information,

(B) The inlet flow rate, inlet velocity, pressure drop, or fan amperage range that represents proper operation of the cyclone,

(C) The standard maintenance and operating procedures that ensure proper operation of the cyclone.

(iii) If you demonstrate that the cyclone is designed to reduce emissions of particulate matter by 95 percent or greater by a performance in accordance with paragraph § 63.11621(e)(1)(iii), you must keep the records specified in paragraphs (c)(4)(iii)(A) through (C) of this section.

(A) Results of the testing conducted in accordance with § 63.11623,

(B) The inlet flow rate, inlet velocity, pressure drop, or fan amperage range that represents proper operation of the cyclone,

(C) The standard maintenance and operating procedures that ensure proper operation of the cyclone.

(iv) Records of all quarterly inspections including the information identified in paragraphs (c)(4)(iv)(A) through (C) of this section.

(A) The date, place, and time of each inspection;

(B) Person performing the inspection;

(C) Results of the inspection, including the date, time, and duration of the corrective action period from the time the inspection indicated a problem to the time of the indication that the cyclone was restored to proper operation.

(v) Records of the daily inlet flow rate, inlet velocity, pressure drop, or fan amperage measurements, along with the date, time, and duration of the correction action period from the time the monitoring indicated a problem to the time of the indication that the cyclone was restored to proper operation.

(5) If you own or operate an affected source that is not subject to the requirement in § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations because your average daily feed production level is 50 tpd or less, feed production records to enable the determination of the average daily feed production level.

(6) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(7) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(8) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

(d) If you no longer use materials that contain manganese or chromium after January 5, 2010, you must submit a Notification in accordance with § 63.11619(c) which includes the information specified in paragraphs (d)(1) and (2) of this section.

(1) Your company's name and address;

(2) A statement by a responsible official indicating that the facility no longer uses materials that contain chromium or manganese. This statement should also include an effective date for the termination of use of materials that contain chromium or manganese, and the responsible official's name, title, phone number, e-mail address and signature.

Other Requirements and Information

§ 63.11625 What parts of the General Provisions apply to my facility?

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11626 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your State, local, or Tribal agency. If the EPA Administrator has delegated authority to your State, local, or Tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11627 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section.

Animal feed includes: Dehydrated alfalfa meal; alfalfa prepared as feed for animals; cubed alfalfa; prepared animal feed; chopped, crushed, or ground barley feed; prepared bird feed; blended animal feed; bone meal prepared as feed for animals and fowls; cattle feeds, supplements, concentrates, and premixes; prepared chicken feeds; cattle feed citrus pulp; complete livestock feed; custom milled animal feed; dairy cattle feeds supplements, concentrates, and premixes; earthworm food and bedding; animal feed concentrates; animal feed premixes; animal feed supplements; prepared animal feeds; specialty animal (*e.g.,* guinea pig, mice, mink) feeds; fish food for feeding fish; custom ground grains for animal feed; cubed hay; kelp meal and pellets animal feed; laboratory animal feed; livestock feeds, supplements, concentrates and premixes; alfalfa meal; bone meal prepared as feed for animals and fowls; livestock micro and macro premixes; mineral feed supplements; animal mineral supplements; pet food; poultry feeds, supplements, and concentrates; rabbit food; shell crushed and ground animal feed; swine feed; swine feed supplements, concentrates, and premixes; and prepared turkey feeds. Feed products produced for dogs and cats are not considered animal feed for the purposes of this subpart.

Average daily feed production level means the average amount of animal feed products produced each day over an annual period. The initial determination of the average daily feed production level is based on the one-year period prior to the compliance date for existing sources, or the design rate for new sources. The subsequent average daily feed production levels are determined annually and are based on the amount of animal feed products produced in a calendar year divided by the number of days in which the production processes were in operation.

Cyclone means a mechanically aided collector that uses inertia to separate particulate matter from the gas stream as it spirals through the cyclone.

Material containing chromium means a material that contains chromium (Cr, atomic number 24) in amounts greater than or equal to 0.1 percent by weight.

Material containing manganese means a material that contains manganese (Mn, atomic number 25) in amounts greater than or equal to 1.0 percent by weight.

Pelleting operations means all operations that make pelleted animal feed, including but not limited to, steam conditioning, die-casting, drying, cooling, and crumbling, and granulation.

Prepared feeds manufacturing facility means a facility that is primarily engaged in manufacturing animal feed. A facility is primarily engaged in manufacturing animal feed if the production of animal feed comprises greater than 50 percent of the total production of the facility on an annual basis. Facilities primarily engaged in raising or feeding animals are not prepared feed manufacturing facilities. Facilities engaged in the growing of agricultural crops that are used in the manufacturing of feed are not considered prepared feeds manufacturing facilities.

§ 63.11628–63.11638 [Reserved]

Tables to Subpart DDDDDDD of Part 63

Table 1 to Subpart DDDDDDD of Part 63—Applicability of General Provisions to Prepared Feeds Manufacturing Area Sources

As required in § 63.11619, you must meet each requirement in the following table that applies to you.

Citation	Subject	Applies to Subpart DDDDDDD?
63.1	Applicability	Yes.
63.2	Definitions	Yes.
63.3	Units and Abbreviations	Yes.
63.4	Prohibited Activities and Circumvention	Yes.
63.5	Preconstruction Review and Notification Requirements.	No.
63.6(a),(b)(1)–(b)(5), (b)(7), (c), (f)(2)–(3), (g), (i), and (j).	Compliance with Standards and Maintenance Requirements.	Yes.
63.6(e)(1), (e)(3), (f)(1), and (h)	Startup, shutdown, and malfunction requirements and opacity/visible emission standards.	No. Standards apply at all times, including during startup, shutdown, and malfunction events.
63.7	Performance Testing Requirements	Yes.
63.8	Monitoring Requirements	Yes.
63.9(a), (b), (c), (d), (h), (i), and (j)	Notification Requirements	Yes.
63.9(e), (f), (g)		No.
63.10(a),(b)(1), (b)(2)(i)–(iii), (b)(2)(vi)–(xiv), (c), (d)(1), (e), and (f).	Recordkeeping and Reporting Requirements	Yes.
63.10(b)(2)(iv)–(v), (b)(3), and (d)(2)–(5)	Recordkeeping and Reporting Requirements	No.
63.11	Control Device Requirements	No.

Citation	Subject	Applies to Subpart DDDDDDD?
63.12	State Authorities and Delegations	Yes.
63.13	Addresses	Yes.
63.14	Incorporations by Reference	Yes.
63.15	Availability of Information and Confidentiality	Yes.
63.16	Performance Track Provisions	Yes.
63.1(a)(5), (a)(7)–(9), (b)(2), (c)(3)–(4), (d), 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv), 63.8(a)(3), 63.9(b)(3), (h)(4), 63.10(c)(2)–(4), (c)(9).	Reserved	No.

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