

The EPA Administrator, Gina McCarthy, signed the following notice on 12/1/2014, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2006-0790. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2006-0790; FRL-9919-36-OAR]

RIN 2060-AS10

National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of reconsideration of final rule; request for public comment.

SUMMARY: On February 1, 2013, the Environmental Protection Agency (EPA) finalized amendments to the National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (Area Source Boilers Rule). Subsequently, the EPA received three petitions for reconsideration of the final rule. The EPA is announcing reconsideration of and requesting public comment on five issues raised in the petitions for reconsideration, as detailed in the Supplementary Information section of this document.

In this action, the EPA is also proposing a limited number of technical corrections and amendments to the final rule to

correct inadvertent errors and to clarify some applicability and implementation issues raised by stakeholders subject to the final rule. Also, we propose to delete rule provisions for an affirmative defense for malfunction in light of a recent court decision on the issue.

The EPA is seeking comment only on the five issues being reconsidered, the proposed deletion of the affirmative defense and on the technical corrections and amendments described in the preceding paragraph. The EPA will not respond to any comments addressing any other issues or any other provisions of the final rule.

DATES: Comments. Comments must be received on or before [**insert date 45 days after publication in the Federal Register**], or 30 days after date of public hearing, if later.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by [**insert date 5 days after date of publication in the Federal Register**], a public hearing will be held on [**insert date 15 days after date of publication in the Federal Register**]. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541-7966 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0790, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

submitting comments.

- Email: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail code: 28221T, Attention Docket ID No. EPA-HQ-OAR-2006-0790, 1200 Pennsylvania Ave., NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand/Courier Delivery: EPA Docket Center (EPA/DC), Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0790. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

www.regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Public Hearing: If anyone contacts the EPA requesting a public hearing by [**insert date 5 days after date of publication in the Federal Register**], the public hearing will be held on [**insert date 15 days after date of publication in the Federal Register**] at the EPA's campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. The hearing will begin at 10:00 a.m. (Eastern Standard Time) and conclude at 5:00 p.m. (Eastern Standard Time). There will be a lunch break from 12:00 p.m. to 1:00 p.m. Please contact Ms. Pamela Garrett at (919) 541-7966 or

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

at garrett.pamela@epa.gov to register to speak at the hearing or to inquire as to whether or not a hearing will be held. The last day to pre-register in advance to speak at the hearing will be **[insert date 12 days after publication in the Federal Register]**.

Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, please let us know at the time of registration. If you require an accommodation we ask that you pre-register for the hearing, as we may not be able to arrange such accommodations without advance notice. The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because the hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma, or the state of Washington, you must present

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center (EPA/DC), Room 3334, EPA WJC

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

West Building, 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. Mary Johnson, Energy Strategies Group, Sector Policies and Programs Division (D243-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5025; facsimile number: (919) 541-5450; email address: johnson.mary@epa.gov.

SUPPLEMENTARY INFORMATION: Organization of this Document. The following outline is provided to aid in locating information in the preamble.

- I. General Information
 - A. What is the source of authority for the reconsideration action?
 - B. What entities are potentially affected by the reconsideration action?
 - C. What should I consider as I prepare my comments for the EPA?
- II. Background
- III. Discussion of the Issues under Reconsideration
 - A. Definitions of Startup and Shutdown
 - B. Alternative Particulate Matter Standard for New Oil-fired Boilers that Combust Low-sulfur Oil
 - C. Establishment of a Subcategory and Separate Requirements for Limited-use Boilers
 - D. Establishment of a Provision that Eliminates Further Performance Testing for Particulate Matter for Certain Boilers Based on their Initial Compliance Test
 - E. Establishment of a Provision that Eliminates Further Fuel Sampling for Mercury for Certain Coal-fired Boilers Based on their Initial Compliance Demonstration

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

- IV. Technical Corrections and Clarifications
- V. Affirmative Defense
- VI. Solicitation of Public Comment and Participation
- VII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act (PRA)
 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act (NTTAA)
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

A red-line version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2006-0790).

I. General Information

A. What is the source of authority for the reconsideration action?

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

B. What entities are potentially affected by the reconsideration action?

Categories and entities potentially regulated by this action include:

Industry Category	NAICS Code ^a	Examples of Regulated Entities
Any area source facility using a boiler as defined in the final rule	321	Wood product manufacturing.
	11	Agriculture, greenhouses.
	311	Food manufacturing.
	327	Nonmetallic mineral product manufacturing.
	424	Wholesale trade, nondurable goods.
	531	Real estate.
	611	Educational services.
	813	Religious, civic, professional, and similar organizations.
	92	Public administration.
	722	Food services and drinking places.
	62	Health care and social assistance.
22111	Electric power generation.	

^a 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 boiler is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11193 of subpart JJJJJJ (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative, as listed in 40 CFR 63.13 of subpart A (General Provisions).

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit this information to the EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Ms. Mary Johnson, c/o OAQPS Document Control Officer (Room C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2006-0790.

Docket. The docket number for this action is Docket ID No. EPA-HQ-OAR-2006-0790.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this document will be posted on the WWW. Following signature, the EPA will post a copy of this document at

<http://www.epa.gov/airquality/combustion/actions.html> and
<http://www.epa.gov/ttn/atw/boiler/boilerpg.html>.

II. Background

The EPA finalized the Area Source Boilers Rule on March 21, 2011 (76 FR 15554). The EPA received eight petitions for reconsideration of the March 2011 rulemaking. On December 23, 2011 (76 FR 80532), the EPA granted the petitions for reconsideration on certain issues, and proposed revisions to the March 2011 final rule in response to the reconsideration petitions and to address four issues the EPA previously identified in the March 21, 2011, action as warranting reconsideration.

On February 1, 2013, the EPA promulgated amendments to the Area Source Boiler Rule (78 FR 7488). Following promulgation of the February 1, 2013, final Area Source Boiler Rule, the EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA. The EPA received a petition dated April 1, 2013, from the American Forest and Paper Association, on their behalf and on behalf of the American Wood Council, National Association of Manufacturers, Biomass Power Association, Corn Refiners Association, National Oilseed Processors Association, Rubber Manufacturers Association, Southeastern Lumber Manufacturers Association and U.S. Chamber of Commerce. The EPA received a petition dated April 2, 2013,

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

from the Council of Industrial Boiler Owners and the American Chemistry Council. Finally, the EPA received a petition dated April 2, 2013, from Earthjustice, on behalf of the Sierra Club, Clean Air Council, Partnership for Policy Integrity, Louisiana Environmental Action Network and Environmental Integrity Project. The petitions are available for review in the rulemaking docket (see document numbers EPA-HQ-OAR-2006-0790-2523, EPA-HQ-OAR-2006-0790-2524 and EPA-HQ-OAR-2006-0790-2525). On August 5, 2013, the EPA issued letters to the petitioners granting reconsideration on five specific issues raised in the petitions for reconsideration and indicating that the agency would issue a Federal Register notice regarding the reconsideration process. This action requests comment on the five issues for which the EPA granted reconsideration. Section III of this preamble summarizes these issues and discusses our proposed responses to each issue.

We are also proposing a limited number of clarifying changes and corrections to the final rule. These amendments would clarify some applicability and implementation issues raised by stakeholders subject to the final rule and correct inadvertent errors promulgated in the final rule. Section IV of this preamble describes the clarifying changes and corrections and provides the rationale for these amendments. In addition, we are proposing to amend the final rule to remove the affirmative

defense provisions. Section V of this preamble provides the rationale for the change.

III. Discussion of the Issues under Reconsideration

The February 1, 2013, amendments, among other things, revised the definitions of "startup" and "shutdown." In addition, the amendments established a subcategory and separate requirements for certain boilers that operate on a limited basis. The amendments also established an alternative particulate matter (PM) standard for new oil-fired boilers that combust low-sulfur oil, and new monitoring provisions that eliminate further stack testing for PM and further fuel sampling for mercury (Hg) under certain circumstances based on initial compliance demonstrations. The EPA received petitions for reconsideration with respect to these specific components of the amendments and granted reconsideration of the following five issues on August 5, 2013, to provide an additional opportunity for public comment:

- The definitions of startup and shutdown periods;
- Alternative particulate matter standard for new oil-fired boilers that combust low-sulfur oil;
- Establishment of a subcategory for limited-use boilers and the applicable standards for that subcategory;
- Provision that eliminates further performance testing for

particulate matter for boilers whose initial compliance

test shows that its particulate matter emissions are equal to or less than half of the particulate matter emission limit; and

- Provision that eliminates fuel sampling at coal-fired boilers that demonstrate compliance with the mercury emission limit by fuel analysis based on the results of the boiler's initial compliance demonstration.

The reconsideration petitions stated that the public lacked sufficient opportunity to comment on these provisions. Although these provisions were established after consideration of public comments received on the proposed rule, the EPA has granted reconsideration on these issues in order to allow an additional opportunity for comment. These issues are discussed in more detail in the following sections. With regard to the startup and shutdown provisions, the EPA is proposing certain revisions to the definitions of startup and shutdown. The proposed revision to the definition of startup is the addition of an alternate definition of startup.

A. Definitions of Startup and Shutdown

The February 1, 2013, final rule revised the definitions of "startup" and "shutdown," as proposed on December 23, 2011. In December 2011, we proposed defining "startup" as the period between the state of no combustion in the boiler to the period where the boiler first achieves 25-percent load (i.e., a cold

start) and "shutdown" as the period that begins when a boiler last operates at 25-percent load and ending with a state of no fuel combustion in the boiler. A number of commenters indicated that the proposed load specifications (i.e., 25-percent load) within the definitions of "startup" and "shutdown" were inconsistent with either safe or normal (proper) operation of the various types of boilers encountered within the source category. As the basis for defining periods of startup and shutdown, a number of commenters suggested alternative load specifications based on the specific considerations of their boilers; other commenters suggested the achievement of various steady-state conditions.

We determined adjustments in the definitions of "startup" and "shutdown" to be appropriate and, as explained in the preamble to the February 1, 2013, final rule, made adjustments that we believed addressed the comments and were appropriate based on the fact that industrial boilers function to provide steam or, in the case of cogeneration units, electricity; therefore, industrial boilers should be considered subject to applicable standards at all times steam of the proper pressure, temperature, and flow rate is being supplied to a common header system or energy user(s) for use as either process steam or for the cogeneration of electricity. In the February 1, 2013, final rule, startup and shutdown were defined based on the time during

which fuel is fired in a boiler for the purpose of supplying steam or heat for heating and/or producing electricity or for any other purpose. We defined startup as the period between either the first-ever firing of fuel in the boiler or the firing of fuel in the boiler after a shutdown and when the boiler first supplies steam or heat. We defined shutdown as the period between either when none of the steam or heat from the boiler is supplied or no fuel is being fired in the boiler, whichever is earlier, and when there is no steam and no heat being supplied and no fuel being fired in the boiler. The EPA received two petitions asserting that the public lacked an opportunity to comment on the amended startup and shutdown definitions.

We are soliciting comment on the definition of startup and shutdown that were promulgated in the February 1, 2013, final rule, with the clarifying revisions explained below. We are proposing to revise the definitions of startup and shutdown in this reconsideration action as set forth in 40 CFR 63.11237. Petitioners asserted that the final rule's definitions of startup and shutdown were not sufficiently clear. Although the EPA revised the definitions of startup and shutdown included in the February 1, 2013, final rule, in response to comments, we have granted reconsideration on this issue to provide an opportunity for comment on those amended definitions, as well as

the adjustments we are now proposing to make to the definitions of startup and shutdown.

1. Startup and Shutdown Periods

Petitioners assert that the terms "supplying" and "or for any other purpose" in both the startup and shutdown definitions are too open-ended and could be read to mean that steam and heat supplied for uses within the boiler itself will end the startup period or delay onset of the shutdown period. Petitioners explain that many boilers use steam to drive rotating equipment such as feedwater pumps, to preheat feedwater and to operate de-aerators, and that some of these uses (e.g., operating feedwater pumps and preheating feedwater) begin in the early stages of starting a boiler and continue until the boiler is cooled down. Petitioners assert that the terms "supplying" and "or for any other purpose" in effect limit the use of energy during startup and shutdown periods and inappropriately truncate these periods. Petitioners state that efficient and cost-effective internal uses of steam and heat for operating the boiler should not be discouraged by definitions that necessarily limit the duration of the startup and shutdown periods and that may require costly retrofits to boilers with no commensurate environmental benefit.

2. Startup

In addition to soliciting public comment on the definition of startup contained in the February 1, 2013, final rule, the EPA is proposing to add an alternate definition to the definition of startup that is in the February 1, 2013, final rule. We are proposing to allow sources to use either definition of startup when complying with the startup requirements. As explained in more detail below, under the alternate definition, startup would end 4 hours after the unit begins supplying useful thermal energy.

Specifically, the EPA is proposing the alternate definition to clarify that, in terms of the first-ever firing of fuel, startup begins when fuel is fired for the purpose of supplying useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or producing electricity and to clarify that startup ends 4 hours after when the boiler makes useful thermal energy. The proposed clarification regarding the end of startup would apply to first-ever startups as well as startups occurring after shutdown events. With regard to when startup begins after a shutdown event, the alternate definition is the same as the definition in the February 1, 2013, final rule. That is, startup begins with the firing of fuel in a boiler for any purpose after a shutdown event.

In this alternate definition, we are proposing the clarification regarding the first-ever firing of fuel to address

implementation issues regarding "pre-startup" activities that are done as part of installing a new boiler. Under the February 1, 2013, definition of "startup," a new boiler would be considered to have started up, and subject to the rule, when it first fires fuel "for any purpose." However, a newly installed unit needs to be tested to ensure that it was properly installed and will operate as it was designed and that all associated components were also properly installed and will operate as designed. The EPA did not intend for the startup period to begin when a newly installed unit first fires fuel for testing or other pre-startup purposes because such firing of fuel does not represent normal operation of the unit.

The EPA is also proposing in the alternate definition to replace "steam and heat" in the February 1, 2013, definition of startup with "useful thermal energy." This proposed revision would apply to first-ever startups as well as startups after shutdown events and is intended to address the issue raised by petitioners that the language in the February 1, 2013, definition regarding the end of the startup period is ambiguous since once fuel is fired some steam or heat is generated, but not in useful or controllable quantities. The petitioners comment that it takes time for steam to be heated to adequate temperatures and pressures for beneficial use and that steam or heat should not be construed to be supplied until it is of

adequate temperature and pressure. The EPA agrees with petitioners that the startup period should not end until such time as fuel is fired resulting in steam or hot water that is useful thermal energy because it takes time for steam to be heated to adequate temperatures and pressures for beneficial use and we believe the appropriate criteria for ending startup in the definition should be when useful steam is supplied. This proposed change doesn't alter the EPA's determination that it is not technically feasible to require stack testing - in particular, to complete the multiple required test runs - during periods of startup and shutdown due to physical limitations and the short duration of startup and shutdown periods.

In order to clarify the term "useful thermal energy," we are proposing a definition for "useful thermal energy" as follows:

Useful thermal energy means energy (i.e., steam or hot water) that meets the minimum operating temperature and/or pressure required by any energy use system that uses energy provided by the affected boiler.

The EPA received two petitions for reconsideration of the definition of startup in the February 1, 2013, final rule. Petitioners assert that the amended definition of startup does not account for a wide range of boilers that operationally are still in startup mode even after some steam or heat is supplied

to the plant. Petitioners assert that some boilers begin to supply steam or heat for some purposes onsite before they have achieved necessary temperature or load to engage emission controls. Petitioners cite the example where a boiler provides steam to a lumber kiln that is starting up. The boiler must preheat the metal steam lines, which is necessary in cold climates where a rush of steam can cause the metal to expand too quickly, resulting in catastrophic damage. Petitioners point out that, according to the final rule, a boiler supplying even a small amount of steam would no longer be in startup and would be required at that point in time to engage emission controls. Petitioners explain that, according to equipment specifications and established safe boiler operations, a source operator should not engage emission controls until specific parameters are met.

Petitioners state that they previously urged the EPA to revise the startup definition to allow facilities to determine the minimum stable operating load on a unit-specific basis and include the minimum stable operating load and the proper procedures to follow during startup and shutdown in a site-specific plan. Petitioners assert that the amended definition of startup still does not account for the broad range of boiler and fuel types, operational methodologies and facility demands placed on boilers. For this reason, petitioners continue to urge the EPA to adopt a startup definition that allows sources to

identify startup periods on a site-specific and unit-specific basis. Petitioners assert that only with this degree of flexibility will the rule account for the multiple design and operational variables of the diverse boiler population regulated in a way that allows safe and effective operation with assurance of compliance with the standard.

Petitioners express that, above all, the boiler operator's primary concern during startup is safety. The startup procedures must ensure that the equipment is brought up to normal operating conditions in a safe manner, and startup ends when the boiler and its controls are fully functional. The end of startup occurs when safe, stable operating conditions are reached, after emissions controls are properly operating. The startup provisions should not include requirements that could affect safe operating practices.

The EPA agrees with petitioners that the startup period should not end until such time that all control devices have reached stable conditions. The EPA has very limited information specifically for industrial boilers on the hours needed for controls to reach stable conditions after the start of supplying useful thermal energy. However, the EPA does have information for electric utility steam generating units (EGUs) on the hours to stable control operation after the start of electricity generation. Using hour-by-hour emissions and operation data for

EGUs reported to the agency under the Acid Rain Program, we found that controls used on the best performing 12 percent EGUs reach stable operation within 4 hours after the start of electricity generation.¹ Since the types of controls used on EGUs are similar to those used on industrial boilers and the start of electricity generation is similar to the start of supplying useful thermal energy, we believe that the controls on the best performing industrial boilers would also reach stable operation within 4 hours after the start of supplying useful thermal energy and have included this timeframe in the proposed alternate definition.² This conclusion is supported by the very limited information (13 units) the EPA does have on industrial boilers and by information submitted by the Council of Industrial Boiler Owners obtained from an informal survey of its members on the time needed to reach stable conditions during startup.³

¹ See technical support document titled "Assessment of Startup Period at Coal-Fired Electric Generating Units - Revised" in the docket.

² It is important to remember that the hour at which startup ends is the hour at which reporting for the purpose of determining compliance begins. Therefore, sources must collect and report operating limit data following the end of startup. These data are used in calculating whether a source is in compliance with the 30-day average operating limits.

³ See attachments to the following Email messages included in the docket: Robert Bessette, CIBO, to Robert Wayland, EPA, dated May 6, 2014; Amy Marshall, URS, to Jim Eddinger, EPA, dated June 10, 2014; and Reynaldo Forte, EPA, to Jim Eddinger, EPA, dated May 7, 2014.

The EPA is seeking comment on the definition of startup in the February 1, 2013, final rule, as well as this action's proposed revision to the February 1, 2013, definition of startup to include an alternate definition of startup.

3. Shutdown

In today's action, the EPA is proposing to revise the definition of shutdown in the February 1, 2013, final rule. Specifically, the EPA is proposing to clarify that shutdown begins when the boiler no longer makes useful thermal energy and ends when the boiler no longer makes useful thermal energy and no fuel is fired in the boiler. The EPA is also proposing to replace "steam and heat" in the February 1, 2013, definition of shutdown with "useful thermal energy" to address the same issue raised by petitioners regarding the language in the definition of "startup" described above. The EPA intended for the shutdown period to begin when fuel is no longer fired for the purpose of creating useful thermal energy.

The EPA received one petition for reconsideration of the definition of shutdown in the February 1, 2013, final rule. Petitioners assert that the amended definition of shutdown is problematic for units firing solid fuels on a grate or in a fluidized bed combustor where the residual material in the unit keeps burning after fuel feed to the unit is stopped.

Petitioners explain that, in such a case, fuel is still burning

("being fired") in the unit despite the fact that load reduction is occurring, additional fuel is not being fed and the shutdown process has clearly begun. For this reason, petitioners assert that the shutdown definition should be revised to state that shutdown begins either when none of the steam and heat from the boiler is supplied for heating and/or producing electricity or when fuel is no longer being fed to the boiler, and that shutdown ends when there is both no steam or heat being supplied and no fuel being combusted in the boiler.

The EPA agrees with the petitioners that, for certain types of boilers where the fuel is combusted on a grate or bed, fuel firing may be considered to continue even after fuel feed to the unit is stopped. The EPA intended that the shutdown period would begin when fuel is no longer being fired for the purpose of creating useful thermal energy. Thus, we believe the proposed revisions to the definition of shutdown that address this issue are appropriate.

The EPA is seeking comment on the February 1, 2013, definition of shutdown, as well as the revisions to the definition of shutdown that we are now proposing to make.

B. Alternative Particulate Matter Standard for New Oil-fired Boilers that Combust Low-sulfur Oil

The February 1, 2013, final rule added a new provision that specifies that new or reconstructed oil-fired boilers with heat

input capacity of 10 million Btu per hour (MMBtu/hr) or greater that combust only oil that contains no more than 0.50 weight percent sulfur or a mixture of 0.50 weight percent sulfur oil with other fuels not subject to a PM emission limit under this subpart and that do not use a post-combustion technology (except a wet scrubber) to reduce PM or sulfur dioxide emissions meet generally available control technology (GACT) for PM, providing the type of fuel combusted is monitored and recorded on a monthly basis. After the December 23, 2011, reconsideration proposal, the EPA received a number of comments urging that we provide an exemption from the PM limit for units burning low-sulfur liquid fuel as is provided in subpart Dc of 40 CFR part 60 (Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units), which is also the basis for the PM emission limit to which these new and reconstructed boilers are subject. Commenters asserted that such an exemption is justified since the low sulfur content indicates low PM emissions and that boilers firing low-sulfur liquid fuel should only be subject to a requirement to maintain records documenting the liquid fuel fired. We agreed that burning low-sulfur liquid fuel can be an alternative method of meeting GACT for PM and added the subpart Dc provision that would allow low-sulfur liquid fuel burning boilers currently complying with subpart Dc

to use the same compliance approach to meet the Area Source Boiler Rule requirement for PM.

The EPA received a petition asserting that the public lacked an opportunity to comment on the new provision for low-sulfur liquid fuel burning boilers as well as the definition of low-sulfur liquid fuel. Petitioners object to this alternative standard because they assert that the EPA has not shown that burning liquid fuels that qualify as being low-sulfur under the final rule will actually control the urban hazardous air pollutants (HAP) for which the category of sources was listed. Petitioners also assert that the final rule's definition of low-sulfur encompasses liquid fuels with extremely high sulfur content and will allow emissions that exceed the numerical emission limit for PM that the EPA determined was GACT. In addition, petitioners note that the final rule allows use of liquid fuel up to 0.5 percent sulfur by weight, which translates to about 5,000 parts per million (ppm), which they assert is far higher than the generally accepted definition of low sulfur content of 500 ppm.

Although the EPA added the alternative PM standard for new oil-fired boilers that combust low-sulfur oil in the February 1, 2013, final rule in response to comments and these comments related to a proposed rule provision that adopted some, but not all, of the provisions for PM control in 40 CFR part 60, subpart

Dc, we have granted reconsideration on this issue to provide an opportunity for comment on the new provision. The EPA requests comment, along with supporting information, on (1) whether and, if so, to what extent burning liquid fuels that qualify as being low-sulfur, as defined under the final rule, would control the urban metal HAP for which the category of sources was listed and for which PM serves as a surrogate (i.e., Hg, arsenic, beryllium, cadmium, lead, chromium, manganese, nickel) and (2) whether the final rule's definition of low-sulfur would allow emissions that exceed the final rule's numerical emission limit for PM.

The EPA also solicits comment on an alternative PM standard for new oil-fired boilers that combust ultra-low-sulfur liquid fuel. The National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (RICE NESHAP) (78 FR 6674, January 30, 2013) require certain stationary emergency compression ignition RICE to use diesel fuel that meets the specifications of 40 CFR 80.510(b), which require that diesel fuel have a maximum sulfur content of 15 ppm. This fuel is referred to as ultra-low sulfur diesel fuel (ULSD). The RICE NESHAP final rule notes that information provided to the EPA by commenters showed that the use of ULSD will significantly reduce emissions of air toxics, including metallic HAP (e.g., nickel, zinc, lead) (78 FR 6680, January 30,

2013). In addition, the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler maximum achievable control technology (MACT)) (78 FR 7138, January 31, 2013) include a provision for certain boilers or process heaters that combust ultra-low-sulfur liquid fuel. The final rule specifies that if an affected boiler or process heater is in the units designed to burn light liquid subcategory and it combusts ultra-low-sulfur liquid fuel, further performance tests do not need to be conducted if the pollutants measured during the initial compliance performance tests meet the emission limits, providing ongoing compliance with the emissions limits is demonstrated by monitoring and recording the type of fuel combusted on a monthly basis. (See 40 CFR 63.7515(h).) The Boiler MACT defines ultra-low-sulfur liquid fuel as a distillate oil that has less than or equal to 15 ppm sulfur. (See 40 CFR 63.7575.)

Specifically, we request comment on an alternative provision to the February 1, 2013, final rule's alternative PM standard for new oil-fired boilers that combust low-sulfur oil that would specify that new or reconstructed oil-fired boilers with heat input capacity of 10 MMBtu/hr or greater that combust only ultra-low-sulfur liquid fuel meet GACT for PM providing the type of fuel combusted is monitored and recorded on a monthly

basis. Under this alternative provision, GACT would not require initial compliance performance testing demonstrating compliance with the PM emission limit because sufficient testing has shown that ULSD contains low levels of urban metal HAP that we can be assured that this alternative standard is effective. The EPA also requests comment, along with supporting information, on whether, and, if so, to what extent burning ultra-low-sulfur liquid fuels, as described above, would control the urban metal HAP for which the category of sources were listed.

C. Establishment of a Subcategory and Separate Requirements for Limited-use Boilers

The February 1, 2013, final rule established a limited-use boiler subcategory that includes any boiler that burns any amount of solid or liquid fuels and has a federally enforceable average annual capacity factor of no more than 10 percent. The final rule established separate requirements for this subcategory of boilers that operate on a limited basis. In response to the December 23, 2011, reconsideration proposal, several commenters asserted that the EPA should also include a limited-use subcategory in the Area Source Boiler Rule for the same reasons we determined a seasonal boiler subcategory was appropriate. Commenters suggested that we should apply the same 5-year tune-up cycle for limited-use units such as auxiliary boilers that we proposed for seasonally-operated units and small

oil-fired units. Commenters explained that in the electric utility industry, auxiliary boilers are typically used to generate the steam necessary to bring a main EGU on line during startup and, since auxiliary boilers are primarily operated during unit startup, operation for many of these boilers is typically very limited and sporadic. Commenters also pointed out that the Boiler MACT includes a limited-use subcategory.

The EPA determined that a limited-use subcategory was appropriate and included a limited-use subcategory along with separate standards in the final Area Source Boiler Rule. Specifically, the final rule specifies that limited-use boilers must complete a tune-up every 5 years. Such boilers are not subject to the emission limits, the energy assessment requirements or the operating limits. In the February 1, 2013, final rule, we stated our belief that establishing a limited-use subcategory was reasonable. First, we pointed out that boilers that operate no more than 10 percent of the year (i.e., a limited-use boiler) would operate for no more than 6 months in between tune-ups on a 5-year tune-up cycle. We further pointed out that the brief period of operations for these limited-use boilers is even less than the number of operating months that seasonal boilers and full-time boilers will operate between tune-ups. Next, we noted that the irregular schedule of operations also makes it difficult to schedule more frequent

tune-ups. Finally, we noted that it is technically infeasible to test these limited-use boilers since these units serve as back-up energy sources and their operating schedules can be intermittent and unpredictable.

The EPA received a petition asserting that the public lacked an opportunity to comment on the new limited-use boiler subcategory, as well as the tune-up requirement established for the new subcategory. Petitioners object to the EPA's decision to create a separate subcategory for these boilers and to the EPA's rationale for requiring nothing more than one tune-up every 5 years for these boilers. Specifically, petitioners assert that limited-use boilers differ from other boilers only in that they are operated for fewer total hours over the course of a year and that the EPA has not explained why this is a distinction that justifies differential treatment.

The EPA disagrees with the petitioners' claim that we have not explained why limited-use boilers should have separate regulatory requirements. As described above, we fully explained our rationale for establishing a limited-use boiler subcategory and separate requirements for that subcategory in the February 1, 2013, final rule. However, in consideration of the fact that the public lacked the opportunity to comment on the new subcategory and requirements, we have granted reconsideration to provide an opportunity for public comment on this issue. The EPA

requests comment regarding whether the separate requirements for a limited-use boiler subcategory are necessary or appropriate. Commenters should provide detailed information supporting their comment. If, after evaluating all comments and data received on this issue, the EPA determines that amendments to the limited-use boiler subcategory and the separate requirements for that subcategory may be appropriate, we will propose such amendments in a future regulatory action.

D. Establishment of a Provision that Eliminates Further Performance Testing for Particulate Matter for Certain Boilers Based on their Initial Compliance Test

The February 1, 2013, final rule added a new provision that specifies that further PM emissions testing does not need to be conducted if, when demonstrating initial compliance with the PM emission limit, the performance test results show that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit. The EPA believes that inclusion of such a provision promotes good PM performance from new boilers and could also promote new technology development. In such instances, the owner or operator must continue to comply with all applicable operating limits and monitoring requirements to ensure that there are no changes in operation of the boiler or air pollution control equipment that could increase emissions. If the initial performance test results show that the

PM emissions are greater than half of the PM emission limit, the owner or operator must conduct subsequent performance tests every 3 years as specified in the final rule. After the December 23, 2011, reconsideration proposal, the EPA received comments asserting that the most effective control strategy for small oil-fired boilers is the tune-up required by the standards and that establishing a PM limit for those boilers between 10 MMBtu/hr and 30 MMBtu/hr just ensures that those boilers will do stack testing demonstrating that the boilers are in compliance without the need for controls; a fact already known. Commenters also asserted that establishing a PM limit imposes a stack test obligation on small facilities with the least resources to deal with the testing. After considering the comments, the EPA did not eliminate or revise the PM limit for new oil-fired boilers with heat input capacity between 10 MMBtu/hr and 30 MMBtu/hr. We did, however, believe that adjustments to the PM performance test frequency, as described above, were appropriate for boilers that demonstrate during their initial performance test that their PM emissions are equal to or less than half of the PM limit. We further stated our belief that the performance test adjustment should not be potentially applicable to only new oil-fired boilers with heat input capacity between 10 MMBtu/hr and 30 MMBtu/hr, but to all new boilers subject to a PM emission limit.

The EPA received a petition asserting that the public lacked an opportunity to comment on the new provision that eliminates further performance testing for PM for certain boilers based on their initial compliance test. Petitioners object to the EPA's decision to exempt sources from PM performance testing indefinitely based on a single performance test showing low emissions. Petitioners assert that because the EPA determined that urban metal HAP emissions should be controlled through a surrogate limit on PM emissions and that compliance with the PM emission limit should be determined through performance testing, the new provision, which fails to require performance testing to determine compliance, is arbitrary. Petitioners further assert that, because of variability in PM emissions, it is arbitrary to conclude that a source that measures low emissions in one test will have emissions below the limit forever thereafter. Specifically, petitioners assert that emissions of PM from individual sources are likely to be highly variable due to variations in proportions of co-fired fuels within a given subcategory, changes in fuel mix within a given fuel type and changes in fuel suppliers for a given fuel type.

We have granted reconsideration on this issue to provide an opportunity for comment on the new provision. The EPA requests comment, along with supporting information, on the magnitude and

range of variability in PM and urban metal HAP emissions from individual boilers. More specifically, we request comment on whether the emissions variability at an individual boiler within a specific subcategory could result in an exceedance of the applicable PM limit by such boiler whose PM emissions are demonstrated to be equal to or less than half of the applicable PM emission limit (i.e., a doubling or more of PM emissions). We also request comment on to what extent a requirement to burn only the fuel types and fuel mixtures used to demonstrate that a boiler's PM emissions are equal to or less than half of the PM limit would limit variability in the boiler's PM emissions.

The EPA also solicits comment on an alternative provision that would specify less frequent performance testing for PM based on the initial compliance test. Specifically, we request comment on an alternative provision that would specify that when demonstrating initial compliance with the PM emission limit, if the performance test results show that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit, additional PM emissions testing would not need to be conducted for 5 years. In such instances, the owner or operator would be required to continue to comply with all applicable operating limits and monitoring requirements to ensure that there are no changes in operation of the boiler or air pollution control equipment that could increase emissions.

We request comment on also including a requirement that the owner or operator only burn the fuel types and fuel mixtures used to demonstrate that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit. As long as the performance test results show that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit, the source could continue conducting performance tests every 5 years. If the initial performance test results or results from a subsequent performance test show that the PM emissions are greater than half of the PM emission limit, the owner or operator would be required to conduct subsequent performance tests every 3 years, as specified in the final rule.

E. Establishment of a Provision that Eliminates Further Fuel Sampling for Mercury for Certain Coal-fired Boilers Based on their Initial Compliance Demonstration

The February 1, 2013, final rule added a new provision that specifies that further fuel analysis sampling does not need to be conducted if, when demonstrating initial compliance with the Hg emission limit based on fuel analysis, the Hg constituents in the fuel or fuel mixture are measured to be equal to or less than half of the Hg emission limit. The EPA believes that inclusion of such a provision promotes use of low-Hg coal. In such instances, the owner or operator must continue to comply

with all applicable operating limits and monitoring requirements, which include only burning the fuel types and fuel mixtures used to demonstrate compliance and keeping monthly records of fuel use. When demonstrating initial compliance with the Hg emission limit, if the Hg constituents in the fuel or fuel mixture are greater than half of the Hg emission limit, the owner or operator must conduct quarterly sampling. After the December 23, 2011, reconsideration proposal, the EPA realized that when the performance stack testing frequency was revised from being required on an annual basis in the June 4, 2010 (75 FR 31896) proposed rule to being required on a triennial basis in the March 2011 final rule, we neglected to revise the fuel analysis requirements. The June 2010 proposed rule required a monthly fuel analysis. The February 1, 2013, final rule requires quarterly fuel analysis if, when demonstrating initial compliance with the Hg emission limit, the Hg constituents in the fuel or fuel mixture are greater than half of the Hg emission limit.

The EPA received a petition asserting that the public lacked an opportunity to comment on the new provision that eliminates further fuel sampling for Hg for certain coal-fired boilers based on their initial compliance demonstration. Petitioners object to the EPA's decision to exempt sources from fuel sampling for Hg based on a single fuel analysis.

Petitioners assert that because the EPA determined that Hg must be regulated based on the performance of maximum achievable control technology and that compliance with the Hg emission limit can be determined through fuel analysis, the new provision, which fails to require fuel analysis to determine compliance, is arbitrary. Petitioners further assert that the variability in the Hg content of fuels available to coal-fired boilers at area sources is so great that a single fuel analysis cannot show that a source will comply with the standard in perpetuity. Petitioners claim that the February 1, 2013, final rule defines coal-fired boilers subject to the standard broadly and allows sources to burn highly non-homogenous fuels without changing subcategories, which enables a high degree of variability in emissions. Specifically, petitioners note that the final rule allows variation in proportions of fuels co-fired (i.e., coal and biomass), changes in fuel mix within a given fuel type and changes in fuel suppliers for a given fuel type.

We have granted reconsideration on this issue to provide an opportunity for comment on the new provision. The EPA requests comment, along with supporting information, on the magnitude and range of variability in Hg content in coal that is likely to be combusted in an individual boiler. More specifically, we request comment on whether the variability within a specific fuel type or fuel mixture could result in an exceedance of the applicable

Hg limit by a boiler in the coal subcategory whose Hg content in their fuel or fuel mixture are demonstrated to be equal to or less than half of the applicable Hg emission limit (i.e., a doubling or more of Hg emissions).

The EPA also solicits comment on an alternative provision that would specify less frequent fuel analysis sampling for Hg based on the initial compliance demonstration. Specifically, we request comment on an alternative provision that would specify that when demonstrating initial compliance with the Hg emission limit based on fuel analysis, if the Hg constituents in the fuel or fuel mixture are measured to be equal to or less than half of the Hg emission limit, additional fuel analysis sampling for Hg would not need to be conducted for 12 months. In such instances, the owner or operator would be required to continue to comply with all applicable operating limits and monitoring requirements, which include only burning the fuel types and fuel mixtures used to demonstrate compliance and keeping monthly records of fuel use, to ensure that there are no changes in operation of the boiler or air pollution control equipment that could increase emissions. As long as the fuel analysis sampling shows that the Hg constituents in the fuel or fuel mixture are equal to or less than half of the Hg emission limit, the source could continue fuel analysis sampling on an annual basis. If the initial fuel analysis sampling or subsequent fuel analysis

sampling show that the Hg emissions are greater than half of the Hg emission limit, the owner or operator would be required to conduct subsequent fuel analysis sampling on a quarterly basis (i.e., every 3 months) as specified in the final rule.

IV. Technical Corrections and Clarifications

We are proposing several clarifying changes and corrections to the final rule. These proposed changes are described in Table 1 of this preamble.

Table 1. Miscellaneous Proposed Changes and Corrections to 40 CFR Part 63, Subpart JJJJJJ

Section of subpart JJJJJJ	Description of Proposed correction
40 CFR 63.11195(k)	Revise the language in this paragraph to use the phrase "as defined in this subpart" instead of "covered by subpart UUUUU of this part" to clarify that fossil fuel-fired EGUs are not subject to the rule.
40 CFR 63.11210(j)	Amend this paragraph to clarify that this provision applies to existing affected boilers that have not operated on any of the fuels subject to subpart JJJJJJ (i.e., "on solid fossil fuel, biomass, or liquid fuel") between the rule's effective date and compliance date.
40 CFR 63.11214(a)	Amend this paragraph to clarify that the requirement to submit a signed statement in the Notification of Compliance Status report that indicates that an initial tune-up of the boiler was conducted only applies to owners and operators of existing coal-fired boilers with a heat input capacity of less than 10 MMBtu/hr.
40 CFR 63.11214(b)	Amend this paragraph to clarify that the requirement to submit a signed

	statement in the Notification of Compliance Status report that indicates that an initial tune-up of the boiler was conducted only applies to owners and operators of existing biomass-fired boilers and existing oil-fired boilers.
40 CFR 63.11214(c)	Amend this paragraph to clarify that the energy assessment is also considered to have been completed if the maximum number of on-site technical hours specified in the definition of energy assessment applicable to the facility has been expended.
40 CFR 63.11220(d)	Amend this paragraph to clarify that this provision applies to existing affected boilers that have not operated on any of the fuels subject to subpart JJJJJJ (i.e., "on solid fossil fuel, biomass, or liquid fuel") since the previous compliance demonstration and more than 3 years have passed since the previous compliance demonstration.
40 CFR 63.11221(c)	Amend this paragraph to clarify that data collected during periods of startup and shutdown may not be used in calculations used to report emissions or operating levels.
40 CFR 63.11222(a)(2)	Amend this paragraph to clarify that the requirement to demonstrate that all fuel types and mixtures of fuels burned would result in lower emissions of Hg than the applicable emission limit (if you demonstrate compliance through fuel analysis), or result in lower fuel input of Hg than the maximum values calculated during the last performance stack test (if you demonstrate compliance through performance stack testing) only applies to owners and operators of boilers subject to a Hg emission limit.
40 CFR 63.11224(a)(7)	Amend this paragraph to clarify the oxygen level set point for a source that operates an oxygen trim system but

	is not required to conduct a carbon monoxide performance stack test.
40 CFR 63.11225(a)(4)	Amend this paragraph to clarify that owners and operators of new boilers subject only to a requirement to conduct a tune-up are not required to prepare and submit a Notification of Compliance Status for the tune-up.
40 CFR 63.11225(b)	Amend this paragraph to clarify that boilers subject only to energy assessment and/or tune-up requirements may submit only a biennial or 5-year compliance report.
40 CFR 63.11225(c)(2)(iv)	Amend this paragraph to include the requirement, as specified in §63.11210(e), that owners and operators of new oil-fired boilers meeting the low sulfur fuel requirements in §63.11210(e) must keep records, on a monthly basis, of the type of fuel combusted.
40 CFR 63.11225(e)(1)	Amend this paragraph to clarify the EPA point of contact for submittal of confidential performance test information.
40 CFR 63.11225(g)	Revise the language in this paragraph to (1) use the phrase "due to a fuel change that results in the boiler meeting the definition of gas-fired boiler, as defined in §63.11237" instead of "due to a change to 100 percent natural gas" to clarify that boilers switching out of subpart JJJJJJ due to a fuel change are not only those that change to 100-percent natural gas, but include those for which the fuel change results in the boiler meeting the subpart JJJJJJ definition of "Gas-fired boiler," which encompasses those boilers that change to 100-percent natural gas; and (2) clarify that in addition to a permit limit resulting in a boiler becoming subject to the subpart, a permit limit can also result

in a boiler no longer being subject to the subpart.

40 CFR 63.11237

Add the definition of "Annual capacity factor" to clarify its meaning within the definition of "Limited-use boiler."

Revise the definition of "Coal" to clarify that coal derived liquids are excluded from the definition of "Coal" and are considered to be a liquid fuel.

Revise the definition of "Dry scrubber" to delete the phrase "and process heaters."

Add the definition of "Fossil fuel" to clarify its meaning within the definition of "Electric utility steam generating unit (EGU)."

Revise the definition of "Gas-fired boiler" to clarify that the 48 hours of liquid fuel usage allowed on an annual calendar basis includes performing maintenance and operator training. This revision clarifies the intent of the liquid fuel usage allowance in that periodic testing, maintenance and operator training activities are all done to ensure that the boiler is capable of operating properly on liquid fuel when needed during periods of gas curtailment, gas supply interruptions or startups. This clarification does not revise the amount of time that liquid fuel can be used on an annual basis, but clarifies when it can be used.

Revise the definition of "Limited-use boiler" to delete the word "average" to eliminate confusion regarding its use in the definition and maintain consistent terminology within the subpart.

	Revise the definition of "Load fraction" to clarify how load fraction is determined for a boiler co-firing natural gas with a solid or liquid fuel.
	Revise the definition of "Oxygen trim system" to include draft controller and to clarify that it is a system that maintains the desired excess air level over its operating load range.
Table 1 to subpart JJJJJJ	Revise item 6.b. to add "(3-run average or 10-day rolling average)" to be consistent with items 1.c. and 2.c. of Table 1.
Table 2 to subpart JJJJJJ	Revise item 16 to clarify that (1) "operates under an energy management program" does not mean that the energy management program must be implemented in perpetuity, but, rather, for at least one year between January 1, 2008, and the compliance date specified in §63.11196; and (2) an energy management program developed according to ENERGY STAR guidelines would also satisfy the requirement.
Table 6 to subpart JJJJJJ	Revise item 2.(c) to clarify that "load fraction" is as defined in §63.11237.

V. Affirmative Defense

In several prior CAA section 112 and CAA section 129 rules, including this rule, the EPA had included an affirmative defense to civil penalties for violations caused by malfunctions in an effort to create a system that incorporates some flexibility, recognizing that there is a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of

efforts, emission standards may be violated under circumstances

entirely beyond the control of the source. Although the EPA recognized that its case-by-case enforcement discretion provides sufficient flexibility in these circumstances, it included the affirmative defense to provide a more formalized approach and more regulatory clarity. See Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1057-58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); but see Marathon Oil Co. v. EPA, 564 F.2d 1253, 1272-73 (9th Cir. 1977) (requiring a more formalized approach to consideration of "upsets beyond the control of the permit holder."). Under the EPA's regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed. Recently, the United States Court of Appeals for the District of Columbia Circuit vacated an affirmative defense in one of the EPA's CAA section 112 regulations. NRDC v. EPA, 749 F.3d 1055 (D.C. Cir., 2014) (vacating affirmative defense provisions in CAA section 112 rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. Specifically, the court found: "As the language of

the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.'" See NRDC, 2014 U.S. App. LEXIS 7281 at *21 ("[U]nder this statute, deciding whether penalties are 'appropriate' ... is a job for the courts, not EPA."). In light of NRDC, the EPA is proposing to remove the regulatory affirmative defense provision in the current rule.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." 40 CFR 63.2 (definition of malfunction).

Further, to the extent the EPA files an enforcement action against a source for violation of an emission standard, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement

actions. Cf. NRDC at 1064 (arguments that violation were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

VI. Solicitation of Public Comment and Participation

The EPA seeks full public participation in arriving at its final decisions. The EPA requests public comment on the five issues under reconsideration. At this time, other than the proposed revisions to the startup and shutdown definitions, the EPA is not proposing any specific revisions to the final rule with regard to the five reconsideration issues. Nevertheless, we may retain or rescind the final rule provisions or adopt an alternative discussed above based on comments and information we receive.

Additionally, the EPA is making certain clarifying changes and corrections to the final rule. We are soliciting comment on whether the proposed changes provide the intended accuracy, clarity and consistency. The EPA is also amending the final rule by removing the affirmative defense provisions. We request comment on all of these proposed changes.

The EPA is seeking comment only on the five issues, the clarifying changes and corrections, and the amendments described

above. The EPA will not respond to any comments addressing any other issues or any other provisions of the final rule or any other rule.

VII. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The OMB has previously approved the information collection requirements contained in the existing regulations and has assigned OMB control number 2060-0668. The EPA is not proposing any new information collection activities (e.g., monitoring, reporting, recordkeeping) as part of this action. With this action, the EPA is seeking additional comments on five aspects of the final Area Source Boiler Rule (78 FR 7488, February 1, 2013). We are also proposing a limited number of amendments that would clarify some applicability and implementation issues raised by stakeholders subject to the final rule and correct inadvertent errors promulgated in the final rule.

This document is a prepublication version, signed by EPA Administrator, Gina McCarthy on 12/1/2014. We have taken steps to ensure the accuracy of this version, but it is not the official version.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action seeks comment on five aspects of the final Area Source Boiler Rule and also proposes a limited number of clarifications and corrections to the final rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action seeks comment on five aspects of the final Area Source Boiler Rule and also proposes a limited number of clarifications and corrections to the final rule.

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. This action seeks comment on five aspects of the final Area Source Boiler Rule and also proposes a

limited number of clarifications and corrections to the 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. This action seeks comment on five aspects of the final Area Source Boiler Rule and also proposes a limited number of clarifications and corrections to the final rule. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will **not** have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action seeks comment on five aspects of the final Area Source Boiler Rule and also proposes a limited number of clarifications and corrections to the final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and
procedure, Air pollution control, Hazardous substances,
Intergovernmental relations, Reporting and recordkeeping
requirements.

Dated:

Gina McCarthy,
Administrator.

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

**PART 63--NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES**

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

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

**Subpart JJJJJJ-National Emission Standards for Hazardous Air
Pollutants for Industrial, Commercial, and Institutional Boilers
Area Sources**

2. Section 63.11195 is amended by revising paragraph (k) to read as follows:

§63.11195 Are any boilers not subject to this subpart?

* * * * *

(k) An electric utility steam generating unit (EGU) as defined in this subpart.

3. Section 63.11210 is amended by revising paragraphs (j) introductory text, (j)(1), and (j)(2) to read as follows:

§63.11210 What are my initial compliance requirements and by what date must I conduct them?

* * * * *

(j) For existing affected boilers that have not operated on solid fossil fuel, biomass, or liquid fuel between the effective

date of the rule and the compliance date that is specified for your source in §63.11196, you must comply with the applicable provisions as specified in paragraphs (j)(1) through (3) of this section.

(1) You must complete the initial compliance demonstration, if subject to the emission limits in Table 1 to this subpart, as specified in paragraphs (a) and (b) of this section, no later than 180 days after the re-start of the affected boiler on solid fossil fuel, biomass, or liquid fuel and according to the applicable provisions in §63.7(a)(2).

(2) You must complete the initial performance tune-up, if subject to the tune-up requirements in §63.11223, by following the procedures described in §63.11223(b) no later than 30 days after the re-start of the affected boiler on solid fossil fuel, biomass, or liquid fuel.

* * * * *

4. Section 63.11214 is amended by revising paragraphs (a) through (c) to read as follows:

§63.11214 How do I demonstrate initial compliance with the work practice standard, emission reduction measures, and management practice?

(a) If you own or operate an existing or new coal-fired boiler with a heat input capacity of less than 10 million Btu per hour, you must conduct a performance tune-up according to

§63.11210(c) or (f), as applicable, and §63.11223(b). If you own or operate an existing coal-fired boiler with a heat input capacity of less than 10 million Btu per hour, you must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted an initial tune-up of the boiler.

(b) If you own or operate an existing or new biomass-fired boiler or an existing or new oil-fired boiler, you must conduct a performance tune-up according to §63.11210(c) or (f), as applicable, and §63.11223(b). If you own or operate an existing biomass-fired boiler or existing oil-fired boiler, you must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted an initial tune-up of the boiler.

(c) If you own or operate an existing affected boiler with a heat input capacity of 10 million Btu per hour or greater, you must submit a signed certification in the Notification of Compliance Status report that an energy assessment of the boiler and its energy use systems was completed according to Table 2 to this subpart and that the assessment is an accurate depiction of your facility at the time of the assessment or that the maximum number of on-site technical hours specified in the definition of energy assessment applicable to the facility has been expended.

* * * * *

5. Section 63.11220 is amended by revising paragraph (d) to read as follows:

§63.11220 When must I conduct subsequent performance tests or fuel analyses?

* * * * *

(d) For existing affected boilers that have not operated on solid fossil fuel, biomass, or liquid fuel since the previous compliance demonstration and more than 3 years have passed since the previous compliance demonstration, you must complete your subsequent compliance demonstration no later than 180 days after the re-start of the affected boiler on solid fossil fuel, biomass, or liquid fuel.

6. Section 63.11221 is amended by revising paragraph (c) to read as follows:

§63.11221 Is there a minimum amount of monitoring data I must obtain?

* * * * *

(c) You may not use data collected during periods of startup and shutdown, monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or quality control activities in calculations used to report emissions or operating levels. Any such periods must be reported according to the requirements in

§63.11225. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

* * * * *

7. Section 63.11222 is amended by revising paragraph (a)(2) to read as follows:

§63.11222 How do I demonstrate continuous compliance with the emission limits?

(a) * * *

(2) If you have an applicable mercury or PM emission limit, you must keep records of the type and amount of all fuels burned in each boiler during the reporting period. If you have an applicable mercury emission limit, you must demonstrate that all fuel types and mixtures of fuels burned would result in lower emissions of mercury than the applicable emission limit (if you demonstrate compliance through fuel analysis), or result in lower fuel input of mercury than the maximum values calculated during the last performance stack test (if you demonstrate compliance through performance stack testing).

* * * * *

8. Section 63.11224 is amended by revising paragraph (a)(7) to read as follows:

§63.11224 What are my monitoring, installation, operation, and maintenance requirements?

(a) * * *

(7) You must operate the oxygen analyzer system at or above the minimum oxygen level that is established as the operating limit according to Table 6 to this subpart when firing the fuel or fuel mixture utilized during the most recent CO performance stack test. If your facility is not required to conduct a CO performance stack test, you must set the oxygen level to the oxygen concentration measured during the most recent tune-up to optimize CO to manufacturer's specifications and you must operate the oxygen analyzer system at or above that level. Operation of oxygen trim systems to meet these requirements shall not be done in a manner which compromises furnace safety.

* * * * *

9. Section 63.11225 is amended by revising paragraphs (a)(4) introductory text, (b) introductory text, (c)(2)(iv), (e)(1) and (g) introductory text to read as follows:

§63.11225 What are my notification, reporting, and recordkeeping, requirements?

(a) * * *

(4) You must submit the Notification of Compliance Status no later than 120 days after the applicable compliance date specified in §63.11196 unless you own or operate a new boiler subject only to a requirement to conduct a biennial or 5-year tune-up or you must conduct a performance stack test. If you own

or operate a new boiler subject to a requirement to conduct a tune-up, you are not required to prepare and submit a Notification of Compliance Status for the tune-up. If you must conduct a performance stack test, you must submit the Notification of Compliance Status within 60 days of completing the performance stack test. You must submit the Notification of Compliance Status in accordance with paragraphs (a)(4)(i) and (vi) of this section. The Notification of Compliance Status must include the information and certification(s) of compliance in paragraphs (a)(4)(i) through (v) of this section, as applicable, and signed by a responsible official.

* * * * *

(b) You must prepare, by March 1 of each year, and submit to the delegated authority upon request, an annual compliance certification report for the previous calendar year containing the information specified in paragraphs (b)(1) through (4) of this section. You must submit the report by March 15 if you had any instance described by paragraph (b)(3) of this section. For boilers that are subject only to the energy assessment requirement and/or a requirement to conduct a biennial or 5-year tune-up according to §63.11223(a) and not subject to emission limits or operating limits, you may prepare only a biennial or 5-year compliance report as specified in paragraphs (b)(1) and (2) of this section.

* * * * *

(c) * * *

(2) * * *

(iv) For each boiler subject to an emission limit in Table 1 to this subpart, you must keep records of monthly fuel use by each boiler, including the type(s) of fuel and amount(s) used. For each new oil-fired boiler that meets the requirements of §63.11210(e), you must keep records, on a monthly basis, of the type of fuel combusted.

* * * * *

(e)(1) Within 60 days after the date of completing each performance test (defined in §63.2) as required by this subpart you must submit the results of the performance tests, including any associated fuel analyses, required by this subpart to EPA's WebFIRE database by using CEDRI that is accessed through EPA's CDX (www.epa.gov/cdx). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see <http://www.epa.gov/ttn/chief/ert/index.html>). Only data collected using test methods on the ERT website are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete

ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including CBI, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using test methods that are not listed on the ERT website, the owner or operator shall submit the results of the performance test in paper submissions to the Administrator at the appropriate address listed in §63.13.

* * * * *

(g) If you have switched fuels or made a physical change to the boiler and the fuel switch or change resulted in the applicability of a different subcategory within subpart JJJJJJ, in the boiler becoming subject to subpart JJJJJJ, or in the boiler switching out of subpart JJJJJJ due to a fuel change that results in the boiler meeting the definition of gas-fired boiler, as defined in §63.11237, or you have taken a permit limit that resulted in you becoming subject to subpart JJJJJJ or

no longer being subject to subpart JJJJJJ, you must provide notice of the date upon which you switched fuels, made the physical change, or took a permit limit within 30 days of the change. The notification must identify:

* * * * *

10. Remove §63.11226.

11. Section 63.11237 is amended as follows:

a. By adding new definitions for "Annual capacity factor," "Fossil fuel," and "Useful thermal energy."

b. By revising the definitions for "Coal," "Dry scrubber," "Gas-fired boiler," "Limited-use boiler," "Load fraction," "Oxygen trim system," "Shutdown," and "Startup."

c. By removing the definition of "Affirmative defense."

§63.11237 What definitions apply to this subpart?

* * * * *

Annual capacity factor means the ratio between the actual heat input to a boiler from the fuels burned during a calendar year and the potential heat input to the boiler had it been operated for 8,760 hours during a year at the maximum steady state design heat input capacity.

* * * * *

Coal means all solid fuels classifiable as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Materials in ASTM D388 (incorporated by

reference, see §63.14), coal refuse, and petroleum coke. For the purposes of this subpart, this definition of "coal" includes synthetic fuels derived from coal including, but not limited to, solvent-refined coal, coal-oil mixtures, and coal-water mixtures. Coal derived gases and liquids are excluded from this definition.

* * * * *

Dry scrubber means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems used as control devices in fluidized bed boilers are included in this definition. A dry scrubber is a dry control system.

* * * * *

Fossil fuel means natural gas, oil, coal, and any form of solid, liquid, or gaseous fuel derived from such material.

* * * * *

Gas-fired boiler includes any boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment, gas supply interruption, startups, or for periodic testing, maintenance, or operator training on liquid fuel. Periodic testing, maintenance, or

operator training on liquid fuel shall not exceed a combined total of 48 hours during any calendar year.

* * * * *

Limited-use boiler means any boiler that burns any amount of solid or liquid fuels and has a federally enforceable annual capacity factor of no more than 10 percent.

* * * * *

Load fraction means the actual heat input of a boiler divided by heat input during the performance test that established the minimum sorbent injection rate or minimum activated carbon injection rate, expressed as a fraction (e.g., for 50 percent load the load fraction is 0.5). For boilers that co-fire natural gas with a solid or liquid fuel, the load fraction is determined by the actual heat input of the solid or liquid fuel divided by heat input of the solid or liquid fuel fired during the performance test (e.g., if the performance test was conducted at 100 percent solid fuel firing, for 100 percent load firing 50 percent solid fuel and 50 percent natural gas, the load fraction is 0.5).

* * * * *

Oxygen trim system means a system of monitors that is used to maintain excess air at the desired level in a combustion device over its operating load range. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that

automatically provides a feedback signal to the combustion air controller or draft controller.

* * * * *

Shutdown means the period in which cessation of operation of a boiler is initiated for any purpose. Shutdown begins when the boiler no longer makes useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, or when no fuel is being fed to the boiler, whichever is earlier. Shutdown ends when the boiler no longer makes useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, and no fuel is being combusted in the boiler.

* * * * *

Startup means:

(1) Either the first-ever firing of fuel in a boiler for the purpose of supplying steam or heat for heating and/or producing electricity, or for any other purpose, or the firing of fuel in a boiler after a shutdown event for any purpose. Startup ends when any of the steam or heat from the boiler is supplied for heating and/or producing electricity, or for any other purpose, or

(2) The period in which operation of a boiler is initiated for any purpose. Startup begins with either the first-ever firing of fuel in a boiler for the purpose of supplying useful thermal energy (such as steam or hot water) for heating, cooling

or process purposes, or producing electricity, or the firing of fuel in a boiler for any purpose after a shutdown event. Startup ends four hours after when the boiler makes useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes, or generates electricity, whichever is earlier.

* * * * *

Useful thermal energy means energy (i.e., steam or hot water) that meets the minimum operating temperature and/or pressure required by any energy use system that uses energy provided by the affected boiler.

* * * * *

12. Table 1 to subpart JJJJJJ is amended by revising the entry for "6." to read as follows:

Table 1 to Subpart JJJJJJ of Part 63 – Emission Limits

As stated in §63.11201, you must comply with the following applicable emission limits:

If your boiler is in this subcategory...	For the following pollutants...	You must achieve less than or equal to the following emission limits, except during periods of startup and shutdown ...
* * * * *		
6. Existing coal-fired boilers	a. Mercury	2.2E-05 lb per MMBtu of heat input.

with heat input capacity of 10 MMBtu/hr or greater that do not meet the definition of limited-use boiler	b. CO	420 ppm by volume on a dry basis corrected to 3 percent oxygen (3-run average or 10-day rolling average).
--	-------	---

13. Table 2 to subpart JJJJJJ is amended by revising the entry for "16." to read and follows:

Table 2 to Subpart JJJJJJ of Part 63 – Work Practice Standards, Emission Reduction Measures, and Management Practices

As stated in §63.11201, you must comply with the following applicable work practice standards, emission reduction measures, and management practices:

If your boiler is in this subcategory...	You must meet the following...
* * * * *	* *
16. Existing coal-fired, biomass-fired, or oil-fired boilers (units with heat input capacity of 10 MMBtu/hr and greater), not including limited-use boilers	Must have a one-time energy assessment performed by a qualified energy assessor. An energy assessment completed on or after January 1, 2008, that meets or is amended to meet the energy assessment requirements in this table satisfies the energy assessment requirement. Energy assessor approval and qualification requirements are waived in instances where past or amended energy assessments are used to meet the energy assessment requirements. A facility that operated under an energy management program developed according to the ENERGY STAR guidelines for energy management or compatible with ISO 50001 for at

	<p>least one year between January 1, 2008, and the compliance date specified in §63.11196 that includes the affected units also satisfies the energy assessment requirement. The energy assessment must include the following with extent of the evaluation for items (1) to (4) appropriate for the on-site technical hours listed in §63.11237:</p> <ul style="list-style-type: none">(1) A visual inspection of the boiler system,(2) An evaluation of operating characteristics of the affected boiler systems, specifications of energy use systems, operating and maintenance procedures, and unusual operating constraints,(3) An inventory of major energy use systems consuming energy from affected boiler(s) and which are under control of the boiler owner or operator,(4) A review of available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage,(5) A list of major energy conservation measures that are within the facility's control,(6) A list of the energy savings potential of the energy conservation measures identified, and(7) A comprehensive report detailing the ways to improve efficiency, the cost of specific improvements, benefits, and the time frame for recouping those investments.
--	---

14. Table 6 to subpart JJJJJJ is amended by revising the entry for "2." to read as follows:

Table 6 to Subpart JJJJJJ of Part 63 – Establishing Operating Limits

As stated in §63.11211, you must comply with the following requirements for establishing operating limits:

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must...	Using . . .	According to the following requirements
* * *	* * *	* *		
2. Mercury	Dry sorbent or activated carbon injection rate operating parameters.	Establish a site-specific minimum sorbent or activated carbon injection rate operating limit according to §63.11211(b).	Data from the sorbent or activated carbon injection rate monitors and the mercury performance stack tests.	(a) You must collect sorbent or activated carbon injection rate data every 15 minutes during the entire period of the performance stack tests;
				(b) Determine the average sorbent or activated carbon injection rate for each individual test run in the three-run performance stack test by computing the average of all the 15-minute readings taken during each test run.

<p>If you have an applicable emission limit for . . .</p>	<p>And your operating limits are based on . . .</p>	<p>You must...</p>	<p>Using . . .</p>	<p>According to the following requirements</p>
				<p>(c) When your unit operates at lower loads, multiply your sorbent or activated carbon injection rate by the load fraction, as defined in §63.11237, to determine the required injection rate.</p>
* * *	* * *	* * *	* * *	* * *