

proposed by the petitioner, we construe the issuance of this proposal as a decision to grant the petition.

B. Why Are We Proposing To Amend the Compliance Provisions?

Section 63.847 of the existing rule establishes compliance provisions for affected sources. Section 63.847(a) gives compliance dates but requires the owner or operator to demonstrate initial compliance by the specified dates. Upon review, we believe the phrase "demonstrate initial performance" could cause misunderstanding of the rule requirements. For example, regulatory authorities could interpret this provision to require a new or reconstructed affected source to demonstrate initial compliance (*i.e.*, conduct the performance test) at startup. For this reason, we are proposing to revise the introductory text in paragraph (a) to clearly state that "the owner or operator of a primary aluminum plant must comply with the requirements of this subpart by" the specified dates in the rule. This clarification would not change any of the compliance dates in the existing rule.

Section 63.847(c) of the existing rule requires the owner or operator to demonstrate initial compliance by conducting a performance test for a potline or anode bake furnace "during the first month following the compliance date." The rule does not address the questions of either when initial compliance must be demonstrated for a new or reconstructed affected source or for an existing affected source that is shut down and subsequently restarted.

Since promulgation of the rule, nearly all primary aluminum plants in northwestern States shut down their potlines as a result of the short supply and high cost of electric power in that region. Some plants may curtail operations through 2003. As the electrical power crisis has eased, primary aluminum plants have begun returning these potlines and anode bake furnaces to active service. In some cases, regulatory authorities have interpreted the rule to require that plants conduct the performance test for these potlines and anode bake furnaces within the first month after startup. While 30 days is sufficient time to conduct a performance test for an existing potline or anode bake furnace which is currently in operation, we believe that 30 days is not sufficient time for startup conditions. A 30-day period would require plants to demonstrate compliance before the startup of a potline could feasibly be completed and to conduct testing under

conditions that are not representative of normal operation.

Aluminum potlines are unique emission sources in the sense that the affected source consists of numerous (100 to 150 or more) smelting cells. At the beginning of startup, a small number of cells are charged with raw materials. When they become functional, they provide a molten liquid bath that is used to start up additional cells. All of the cells cannot be started and stabilized simultaneously because the electrolytic chemical process requires a stable equilibrium between the molten bath and cell operating temperatures. Until equilibrium is achieved, the emission rates from the potline are not representative of normal operation. For these reasons, the startup, stabilization, and testing of an existing potline after a long-term shutdown may require as long as 6 months to complete.

Therefore, we are proposing additional time for initial startup of new or reconstructed potlines and startup of existing potlines that have been shut down for long periods. The additional time proposed (180 days) is reasonable and is consistent with § 63.7 of the General Provisions (40 CFR part 63, subpart A), which allows up to 180 days after startup for existing, new, or reconstructed affected sources to come online, complete performance tests, and establish parametric monitoring limits.

Anode bake furnaces do not have the startup complexities associated with the dozens of cells in a potline. Bake furnaces are restarted a few sections at a time and require several days rather than several weeks to stabilize. For this reason, we are proposing to allow 45 days after initial startup of a new or reconstructed anode bake furnace or startup of an existing anode bake furnace that was shut down for a long period and subsequently restarted.

We are proposing that the 180-day period for startup of a potline begin when the first pot is energized. For an anode bake furnace, the 45-day period would start at the beginning of the first anode bake furnace cycle. This approach is consistent with the definition of *startup* in the General Provisions, "the setting in operation of an affected source for any purpose."

Existing paste production plants also may have been shut down along with potlines and anode bake furnaces. However, no performance test or other type of compliance demonstration is required for paste plants. Initial compliance with the equipment standard for this affected source is based on inspections and review of their records to ensure that the proper

equipment has been installed. Under the rule, unless a compliance extension is granted, an existing paste production plant must comply with the rule by the required date. A new or reconstructed paste production plant must meet the rule requirements upon startup; this also applies if the plant has been shut down and subsequently restarted. However, the owner or operator is required to provide advance notice of the startup.

Section 63.847(g) of the rule allows the owner or operator to demonstrate initial compliance with the requirements for new pitch storage tanks either by conducting a performance test or by a design evaluation. The proposed amendments would require the owner or operator to demonstrate initial compliance within 30 days of the compliance date if the owner or operator elects to conduct a performance test. We are proposing a 30-day period because we believe this is adequate time to complete the emission test.

During startup, the plant must meet all of the EPA requirements for maintaining control equipment and minimizing emissions as much as possible during the startup period. We have not added specific requirements to the rule because this is already required by the operation and maintenance requirements in § 63.6(e) of the General Provisions. Section 63.6(e)(3) also requires the owner or operator to operate and maintain the affected source and control equipment according to the procedures in the startup, shutdown, and malfunction plan.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;