

*B. Option 1: Facilities That Implement Pollution Prevention To Eliminate HAP Emissions Subject to Regulation Under a NESHAP Subpart*

We are proposing to add § 63.17 to the General Provisions to address facilities that were subject to a NESHAP subpart on the first applicable compliance date, and which subsequently have implemented P2 measures that eliminate all HAP emissions that are regulated under that subpart. Under the proposed provision, such facilities could submit a request to the Administrator to no longer be subject to the subpart. If approved, the facility would no longer be subject to the subpart, as long as it does not resume emitting HAP from the regulated source(s) of emissions.

A facility would be eligible for Option 1 if the following three conditions are met for a particular NESHAP subpart:

- The facility was subject to the subpart on the first compliance date that applied to the facility under the subpart.
- The facility has implemented P2 measures which ensure that no HAP is emitted from any source of emissions that is subject to any requirement under the subpart.
- None of the emission limitations under the subpart already require the complete elimination of HAP emissions.

By “first applicable compliance date” we mean the first date by which a source must comply with an emission limitation or other substantive regulatory requirement (*i.e.*, emission limit, leak detection and repair program, work practice standard, housekeeping measure, *etc.*, but not a notice requirement) in the applicable NESHAP subpart. For an existing major source, the first applicable compliance date is the compliance date defined in the subpart for such sources, typically 3 years after the effective date (*i.e.*, promulgation date) of the subpart. (This is also true for subparts that apply to area sources.) For subparts that have multiple and staggered compliance dates for different emission limitations, this means the first such date. For a new source, the first applicable compliance date is either the date of startup or the effective date of the subpart, whichever is later.

We have included this condition because this mechanism is intended primarily for facilities that have initially been subject to a NESHAP subpart and complied through conventional means, such as add-on emission control equipment or mandated work practices. In this way, we intend to encourage and reward the development and

implementation of P2 measures for such facilities.

As a general matter, we already encourage facilities to develop and implement P2 measures prior to the first applicable compliance date. Facilities that eliminate HAP through P2 (or otherwise) prior to the first compliance date avoid becoming subject to major source NESHAP subparts. The proposed General Provisions section (§ 63.17) would extend the same benefits to facilities that implement P2 measures to eliminate HAP after this initial window of opportunity. This condition would require the facility to use P2 to reduce HAP emissions to zero for all the sources of emissions subject to any requirement under a particular NESHAP subpart. For purposes of this proposal, “pollution prevention” means “source reduction” as defined in the Pollution Prevention Act. As discussed earlier in this preamble, we are proposing to add this definition to § 63.2 of the General Provisions.

By “sources of emissions” we mean all emission units or processes, which includes sources of fugitive emissions as well as sources with identifiable points of emissions (such as stacks). “Subject to any requirement under the subpart” refers to sources of emissions to which any type of requirement applies under the subpart. This includes sources of emissions to which emission limitations apply. “Emission limitations” include operation and maintenance, design, equipment, work practice, and operational requirements, as well as emission limits, opacity limits, operating limits, and visible emissions limits. Moreover, this includes sources of emissions that are below a cutoff in the subpart so that an emission limitation does not apply, but monitoring or recordkeeping requirements apply.

Option 1 would apply subpart by subpart. That is, a facility could use this mechanism to cease being subject to one NESHAP subpart, even if it continued to emit HAP from equipment that is subject to a different NESHAP subpart.

Option 1 would be “all or nothing.” A facility would not be eligible to use this mechanism if it eliminated HAP emissions from only some of the sources of emissions that are regulated under the NESHAP subpart. For example, if a subpart includes multiple affected sources, a facility could not use this provision to become exempt from the subpart for individual affected sources. However, such facilities could likely use the second option to obtain reduced monitoring, recordkeeping, and reporting requirements for those affected sources or individual sources of

emissions for which they have eliminated HAP emissions.

Option 1 could be used only when none of the emission limitations in the subpart require the facility to completely eliminate HAP emissions. Any zero HAP limitation could only be achieved through P2. (Add-on controls, work practices, *etc.*, can never achieve zero HAP emissions as long as HAP are used or produced.) Thus, a facility that implements P2 to eliminate HAP emissions from the subject source of emissions is simply meeting the required limitation. We do not believe that such a facility should be exempted from an emission limitation, and the associated monitoring, recordkeeping, and reporting, if the subpart already has a requirement to meet a zero HAP limitation.

Furthermore, we believe that subparts that include a requirement to meet a zero HAP emission limitation contain associated compliance provisions (such as testing, monitoring, recordkeeping, and reporting) that are appropriate for that limitation, and that no further relief is warranted. However, if a facility implements P2 measures that were unanticipated during development of the subpart, rendering the subpart’s compliance provisions inappropriate, the facility could use the second option to obtain appropriate provisions.

It should be noted that requirements for zero visible emissions or zero opacity do not qualify as “zero HAP emission limitations.” Such limits can be met without completely eliminating HAP from a process. Thus, such limits do not preclude a source from using this option.

Under Option 1, a facility could submit a written request to the Administrator to no longer be subject to the subpart at any time after the subpart’s first applicable compliance date. As defined in § 63.2 of the General Provisions, “Administrator” means the EPA Administrator or his or her authorized representative, such as a State that has been delegated the authority to implement the provisions of part 63. For Performance Track member facilities, the Administrator would designate a central contact within the EPA to facilitate and expedite the review of such requests for a P2 exemption. Owners and operators of Performance Track member facilities would be encouraged to submit their requests to the designated Performance Track contact within EPA in addition to the EPA Administrator.

The request may include any information that the facility considers useful in demonstrating that the subpart should no longer apply. At a minimum,