

the written request would be required to include these six items:

- A statement identifying the NESHAP subpart and the operations that are currently subject to the subpart, and indicating that the facility is applying to no longer be subject to the subpart.
- A description of the P2 measures used to eliminate HAP emissions and a demonstration that the measures qualify as P2 as defined in § 63.2.
- A demonstration that the P2 measures have eliminated all HAP emissions from each and every source of emissions subject to an emission limitation under the subpart.
- Documentation that the subpart does not include a limit of zero HAP emissions for any of the sources of emissions subject to an emission limitation under the subpart.
- A certification (signed by a responsible official) that the facility will not resume emitting HAP without notifying the Administrator in writing at least 30 days prior to doing so.
- A certification (signed by a responsible official) agreeing that, upon resuming HAP emissions, the relevant subpart again applies, and the facility must immediately comply with the requirements of the subpart.

The first four items that would be required simply identify the NESHAP subpart and the affected equipment, indicate that the facility wishes to use this provision to be exempt from the subpart, and demonstrate that the facility meets the eligibility requirements. The fifth is an enforceable commitment by the facility not to resume emitting HAP from the affected operations without giving at least 30 days written notice. The sixth is an enforceable acknowledgment by the facility that if it resumes emitting HAP from the affected operations, the relevant subpart applies immediately and the facility would be required to comply with the subpart immediately upon beginning to emit HAP.

A facility that submits a request under Option 1 would remain subject to the NESHAP subpart in question until the Administrator notifies it in writing that the request to no longer be subject to the subpart has been approved. When the Administrator receives a request under Option 1, he or she would notify the facility in writing of approval or intent to deny approval within 45 days after receiving the original request. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator intends to disapprove the request, he or she would include the following three items in the written notification:

- Notice of the information and findings on which the intended disapproval is based.
- Notice of the opportunity for the facility to present additional information before final action on the request.
- A deadline for the facility to present the additional information.

If the facility fails to provide additional information by the deadline established above, the Administrator would disapprove the request. If the facility provided additional information by the deadline, the Administrator would notify the facility of approval or disapproval within 45 days after receiving the information. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator finds that the facility meets the requirements under Option 1, he or she would approve the facility's request to no longer be subject to the subpart. However, the Administrator could condition approval on additional compliance measures as deemed necessary. The Administrator would transmit written approval to the facility that includes the following components:

- Identification of the subpart that no longer applies.
- Identification of the sources of emissions to which the subpart would otherwise apply.
- Any additional compliance measures deemed necessary.
- A requirement that the facility provide written notice to the Administrator at least 30 days prior to beginning to emit HAP from the designated sources of emissions.
- A condition that the applicable requirements of the subpart will again apply to the designated sources of emissions on the date that the facility begins to emit HAP from the sources of emissions, and that the facility must comply with the requirements of the subpart on that date. This written approval would serve as an enforceable agreement between the enforcing agency and the facility.

We believe that 45 days is a reasonable period for the Administrator to review a request and determine whether it should be approved or denied. We also believe that a reduced period of 30 days is a reasonable period of time for the Administrator to review a request from a Performance Track

member facility and determine whether it should be approved or denied, particularly with the support of a designated central contact within EPA to facilitate and expedite the Performance Track request. Performance Track member facilities would be accorded a shorter review period in recognition of their top environmental performance, because of EPA's increased familiarity with operations at these member facilities, and to provide an incentive to promote increased participation in the Performance Track program. However, we have proposed that a failure to meet this deadline should not be deemed approval because we believe that an action of this importance should not go into effect without affirmative approval.

After a facility's request has been approved, the facility would be required to keep the commitments it agreed to during the request/approval process. These include the commitment not to emit HAP from the affected sources of emissions without giving at least 30 days prior notice and the requirement to carry out any additional compliance measures upon which the approval was conditioned.

In addition, we believe that the facility should keep records sufficient to show that it is meeting its commitments. Nevertheless, we have not proposed that the facility must accept specified monitoring, recordkeeping, and reporting requirements for this purpose. We believe that the situation after an approval is analogous to that of any other facility in a source category for which a NESHAP subpart is promulgated. These facilities would be required to determine whether they are subject to the subpart, and, if not, they would be required to produce documentation to satisfy the Administrator that they are not subject when asked to do so. If a facility incorrectly asserted that it was not subject to the subpart, it would be subject to an enforcement action for failing to meet the requirements of the subpart.

This being said, we also acknowledge that all facilities are unique. We are proposing that the Administrator may condition approval on additional compliance measures, and these may include monitoring, recordkeeping, and/or reporting as warranted by individual circumstances. However, we do not think the level required for demonstrating continuous compliance under a NESHAP subpart is likely to be appropriate here.

If a facility resumes HAP emissions from the affected operations, the NESHAP subpart would apply to the