

candidate for P2 alternative compliance requirements.

After a facility's request has been approved under Option 2, the facility would keep the commitments it agreed to during the request/approval process. This includes the commitment to neither discontinue the P2 measures, nor fail to maintain the HAP emissions reductions described in the request without giving at least 30 days prior notice. It also includes the commitment to comply with the NESHAP subpart for all sources of emissions not designated in the request and approval, and the commitment to carry out the approved P2 alternative compliance requirements (including any added by the Administrator as a condition of approval).

After approval, the P2 alternative compliance requirements would replace the identified portions of the NESHAP subpart and General Provisions for the designated sources of emissions. They would become the enforceable requirements for the facility under 40 CFR part 63 for the subpart.

Note that the facility would be required to maintain the HAP emissions reductions described in its request and approved by the Administrator, even if this requirement is more stringent than the subpart's emission limit. This would be a condition of approval, and the facility would be required to agree to it during the request/approval process. Because the facility's margin of compliance with the MACT emission limits may have been an important consideration in development and approval of its P2 alternative compliance requirements, it is important that the compliance margin be maintained. Alternative compliance requirements approved based on a large margin of compliance may not be adequate to demonstrate continuous compliance during times when the facility operates closer to the emission limit in the subpart. Thus, facilities should be aware that they will be held to the HAP reductions described in their requests. If necessary, they may want to build in some flexibility by claiming less HAP reductions than they are able to obtain with the P2 measures under optimum current operating conditions.

If a facility discontinued the P2 measures and/or failed to maintain the HAP emissions reductions described in the approved request without giving at least 30 days prior notice, it may be subject to an enforcement action for violating the commitments it agreed to as a condition of approval. In addition, all portions of the NESHAP subpart would apply to the facility immediately, and the facility would be required to

comply with the subpart immediately upon discontinuing the P2 measures and/or failing to maintain the HAP reductions described in the approved request, whether or not the facility gave the required prior notice. The facility may be subject to an enforcement action if it does not comply with all portions of the NESHAP subpart immediately.

A facility operating under approved P2 alternative compliance requirements could submit a request, at any time, to modify the alternative requirements. The request may involve changes to any combination of the approved P2 measures, levels of HAP reductions, and alternative compliance requirements.

A request for a modification would include, at a minimum, the same information required for an initial request for P2 alternative compliance requirements. The facility may include any additional information that it believes will help demonstrate that modifications are justified.

The Administrator would review the request and approve or disapprove it according to the procedures for an initial request. The facility would remain subject to the existing P2 alternative compliance requirements and all associated commitments until it received written approval of the requested modifications.

A facility that receives approval of P2 alternative compliance requirements would remain subject to the NESHAP subpart. As a result, the facility also would remain subject to title V permitting requirements.

The "applicable requirements" that come out of the request/approval process would be added to the title V permit. These would include the following:

- The approved P2 alternative compliance requirements (including any requirements added by the Administrator as a condition of approval), with associated sources of emissions.

- Citations for the subpart and General Provisions requirements that have been replaced by the P2 alternative compliance requirements, with associated sources of emissions.

- A requirement to give at least 30 days notice prior to discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request.

- A stipulation that all portions of the subpart apply, and the facility must comply immediately upon discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request.

Similarly, any requirements in the subpart which no longer apply to the

facility would be removed from the title V permit. From the perspective of 40 CFR part 63, the facility would be subject to the P2 alternative compliance requirements (and not to the replaced NESHAP subpart and General Provisions requirements) upon receiving written approval of its request from the Administrator. As noted previously, we believe that the facility should generally be able to implement the approved change in status immediately, with the needed title V permit revisions taking place afterwards.

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;

- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that these proposed amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the proposed amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2099.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-