

small tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 and whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product (for the remainder of this preamble, these sources will be referred to as “existing small kilns that are rebuilt such that they become large kilns”) to meet the relevant standards (*i.e.*, new source MACT) by retrofitting with a DIFF, DLS/FF, or WS. In addition, we believe that it is not technologically and economically feasible for an existing large DLA-controlled kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 (for the remainder of this preamble, these sources will be referred to as “existing large DLA-controlled kilns that are rebuilt”) to meet the relevant (*i.e.*, new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS. Accordingly, we have added regulatory language in 40 CFR 63.8390(i) to provide that an existing small kiln that is rebuilt such that it becomes a large kiln and an existing large DLA-controlled tunnel kiln that is rebuilt do not meet the definition of reconstruction in 40 CFR 63.2 and are not subject to the same requirements as new and reconstructed large tunnel kilns. However, it is technologically and economically feasible for both types of kilns described in 40 CFR 63.8390(i) to retrofit with a DLA (or to continue operating an existing DLA) and we have revised today’s final rule to require that such kilns meet emission limits that correspond to the level of control provided by a DLA. We continue to believe that DIFF, DLS/FF, and WS are appropriate technologies for new large tunnel kilns and for reconstructed large tunnel kilns that were equipped with DIFF, DLS/FF, or WS prior to reconstruction. However, DLA are the only APCD that have been demonstrated on small tunnel kilns (which have smaller airflows than large tunnel kilns), and, therefore, the requirements for new and reconstructed small tunnel kilns are based on the level of control that can be achieved by a DLA. We note that facilities have the flexibility to select any control device or technique that ensures that emissions from their brick kilns are in compliance with the emission limits set forth in the final rule. Each of the APCD described above have advantages and disadvantages to their use, and the selection of the APCD to meet the requirements of the final rule will be dependent on site-specific parameters.

#### *B. Affected Source*

##### *1. Production-Rate Limit*

The proposed rule subcategorized tunnel kilns based on a 9.07 Mg/hr (10 tph) design capacity. We requested comment on the appropriate design capacity-based subcategorization level in the preamble to the proposed rule. We received numerous comments regarding subcategorization of tunnel kilns. While some commenters agreed with the 9.07 Mg/hr (10 tph) distinction among tunnel kiln subcategories, several commenters thought that the 9.07 Mg/hr (10 tph) limit was arbitrarily assigned. The commenters charged that EPA did not use all available data in determining the appropriate size cutoff. Many commenters argued that the design capacity limit should be higher based on available data (*i.e.*, 10.1 Mg/hr (11.1 tph) or 12.1 Mg/hr (13.3 tph)). The commenters disagreed that the cutoff should be rounded down from 10.1 Mg/hr (11.1 tph) to 9.07 Mg/hr (10 tph).

Some commenters noted that a design capacity distinction gives a competitive advantage to facilities operating smaller kilns. One commenter disagreed that there was a technological basis for differentiating among tunnel kilns producing above or below 9.07 Mg/hr (10 tph). The commenter stated that EPA may not subcategorize tunnel kilns to reduce costs.

Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, APCD viability, or opportunities for pollution prevention exist within the source category. Section 112(d)(1) of the CAA states “the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory” in establishing emission standards. Thus, we have discretion in determining appropriate subcategories based on classes, types, and sizes of sources. We used this discretion in developing subcategories for the BSCP source category. We first subcategorized kilns based on type (*i.e.*, periodic kilns versus tunnel kilns). We then further subcategorized tunnel kilns based on kiln size. Our distinctions are based on technological differences in the equipment. For example, periodic kilns are smaller than tunnel kilns and operate in batch cycles, whereas tunnel kilns operate continuously. There are also differences in the effective application of air pollution controls. To our knowledge, HAP emissions from periodic kilns have not successfully been controlled. Similarly, we distinguished between tunnel kilns with

design capacities above and below 9.07 Mg/hr (10 tph) at proposal in part because the APCD we believed to be the best performers (DIFF, DLS/FF, and WS) were not demonstrated on existing tunnel kilns with design capacities below roughly 9.07 Mg/hr (10 tph). For the reasons discussed below, we revisited the appropriate subcategorization level in response to comments on the proposal when developing today’s final rule. While we continue to believe that 9.07 Mg/hr (10 tph) is the appropriate subcategorization level, our reasons for choosing that level have changed since proposal in light of new information that we received during the public comment period about DLA controls and the three proposed MACT controls (DIFF, DLS/FF, and WS).

As discussed earlier, numerous commenters pointed out serious concerns regarding retrofitting existing kilns with APCD such as DIFF, DLS/FF, and WS. Therefore, we now consider DLA to be the only currently available technology that can be used to retrofit existing kilns, including existing small kilns that are rebuilt such that they become large kilns and existing large DLA-controlled kilns that are rebuilt, without potentially significant impacts on the production process.

In response to comments suggesting that we include new data in our analyses, we updated our data base with information on new kilns, new APCD (except those controls that we consider to achieve the lowest achievable emission rate (LAER) as specified in section 112(d)(3)(A) of the CAA), changes in kiln capacities, and changes in facility ownership. We used the information submitted by commenters and made followup calls to States and individual facilities for additional clarification as necessary to update our data base.

We used our updated data base in reevaluating all aspects of the proposed standards. The smallest tunnel kiln with MACT floor controls (*i.e.*, with DLA controls reflecting the existing source MACT floor under today’s final rule) in our updated database has a capacity of 8.3 Mg/hr (9.1 tph). Rounding up to the nearest integer, based on current application of APCD to BSCP tunnel kilns, we believe that 9.07 Mg/hr (10 tph) continues to be an appropriate subcategorization level. Commenters have stated that a smaller tunnel kiln (*e.g.*, 4.5 Mg/hr (5 tph) capacity) is dissimilar from a larger tunnel kiln (*e.g.*, 13.6 Mg/hr (15 tph) capacity), especially with regard to the airflow, which is a key operating parameter for APCD. Airflow is particularly important for