

lime injection-type systems (DIFF and DLS/FF), because the injected lime is carried through the reaction chamber (or duct) by the kiln exhaust gas. For a given lime injection rate, if a minimum exhaust flow is not maintained, the sorbent can settle in the duct work and cause APCD malfunction. Furthermore, APCD malfunctions can affect the airflow within the kiln, and can destroy product that is in the kiln. We believe that DIFF and DLS/FF systems, if attempted on smaller kilns, would experience more difficulties with respect to airflow than systems on larger kilns because as the design airflow decreases, the acceptable operating range also would be expected to decrease. Any fluctuation in airflow would be expected to have a greater impact on APCD operation as the size of the system decreases. Given the technological concerns and the capacities of currently-controlled tunnel kilns, we maintain that a design capacity-based subcategorization level of 9.07 Mg/hr (10 tph) is appropriate for existing tunnel kilns.

We acknowledge the comments suggesting that 10.1 Mg/hr (11.1 tph) should be the size cutoff based on the smallest DIFF-controlled tunnel kiln. However, because we now consider that the performance of a DLA represents the MACT floor for existing sources (and DIFF, DLS/FF, and WS also can meet the emission limits), we considered the smallest non-LAER DLA-controlled kiln in setting the subcategorization level. We disagree that 12.1 Mg/hr (13.3 tph) would have been the proper level for proposal or for the final rule. We believe that consideration of technological differences and the effective application of APCD to kilns of different sizes is the appropriate method of selecting a subcategorization level. We maintain that 9.07 Mg/hr (10 tph) is appropriate.

We understand that, regardless of the particular subcategorization level selected, there will be facilities that operate kilns with throughputs slightly above the level and some that operate kilns at slightly below the level. Facilities operating kilns slightly above the subcategorization level have the option of accepting a federally enforceable permit limit to limit their throughput to below the level. Facilities operating just below the level must make careful decisions regarding expansion of their kilns. We acknowledge that facilities operating near the subcategorization level must make decisions regarding permit limits and expansions based on facility-specific considerations (e.g., control costs, impact on revenue). However, as some commenters have pointed out,

cost is not an appropriate criteria for us to use in establishing subcategories, because our discretion for establishing subcategories is limited, under the CAA, to distinguishing among classes, types, and sizes of sources.

## 2. R&D Kiln Definition

One commenter requested that we change the definition of research and development (R&D) kiln so that it is consistent with the definition of R&D in section 112(c)(7) of the CAA and most other NESHAP. Therefore, today's final rule includes a revised definition of research and development kiln that is consistent with section 112(c)(7) of the CAA and other NESHAP.

## C. Existing Source MACT

### 1. Consideration of Synthetic Area Sources in the MACT Floor Determinations for Existing Sources

In the preamble to the proposed BSCP rule, we requested comment on inclusion of synthetic area sources (also called synthetic minor sources) in the MACT floor determinations for existing tunnel kilns. For the remainder of this preamble, we will refer to these sources as synthetic minor sources. Synthetic minor sources are those facilities that emit fewer than 10 tons per year of any HAP and fewer than 25 tons per year of any combination of HAP because they use some emission control device (or devices), the operation of which is required by a Federally Enforceable State Operating Permit (FESOP). In the absence of such controls, these sources would be major.

Inclusion of synthetic minor sources in the MACT floor determination was an issue prior to proposal because whether or not synthetic minor sources were included would affect the level of control represented by the floor determinations for existing large tunnel kilns (i.e., tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph)). Had synthetic minor sources been excluded, the MACT floor for existing tunnel kilns would have been "no emissions reductions." With synthetic minor sources included (as we proposed), the MACT floor for existing tunnel kilns was based on a DIFF, DLS/FF or WS.

Industry representatives asserted, prior to proposal, that the BSCP MACT floor determination should not include synthetic minor sources. We rejected the idea of excluding synthetic minor sources from the MACT floor determination for several reasons discussed in the preamble to the proposed rule. (See 67 FR 47894, 47911–47912, July 22, 2002.)

Nevertheless, because of the industry representatives' arguments, we requested comment from all interested parties on inclusion of synthetic minor sources in MACT floor determinations.

Following proposal, numerous industry representatives commented on the issue of whether to include synthetic minor sources in MACT floor determinations. The industry representatives commented that only major sources are included in the listed BSCP source category, and therefore, only major sources are to be used in the MACT floor determination. The commenters referenced section 112(a)(1) of the CAA, which defines major source as a source that "emits or has the potential to emit *considering controls* 10 tons per year \* \* \*." (emphasis added), and stated that by definition, synthetic minor sources are not major sources. The commenters noted that EPA did not include true area sources (or minor sources) in the MACT floor determination and stated that synthetic minor sources should be treated similarly for purposes of establishing MACT floors.

An environmental group also commented on the issue of including synthetic minor sources in MACT floor determinations. The commenter supported EPA's decision to include synthetic minor sources in the MACT floor for BSCP. The commenter stated that the CAA requires EPA to include synthetic minor sources in MACT floor determinations. The commenter stated that excluding consideration of the best-controlled sources (which became synthetic minor sources as a result of effective controls) would contradict the CAA section 112(d) MACT floor methodology established by Congress. The commenter argued that such exclusion would weaken emission standards required for existing sources, and increase the levels of air toxics released into the environment.

Section 112(d) of the CAA directs us to establish emission standards for each category or subcategory of major sources and minor sources of HAP listed for regulation pursuant to section 112(c) of the CAA. Each such standard must reflect a minimum level of control known as the MACT floor. (See CAA section 112(d).) However, section 112 of the CAA does not specifically address synthetic minor or synthetic area sources, which include those sources that emit fewer than 10 tons per year of any HAP or fewer than 25 tons per year of any combination of HAP because they use some emission control device(s), pollution prevention techniques or other measures (collectively referred to as controls in this preamble) adopted