

the proposal. *See* 67 FR 2288–2298, January 16, 2002, for a more detailed discussion of today's changes to each NESHAP. Instead, EPA has limited the discussion in this preamble to issues raised by commenters, and to discuss changes made to the final rule based on those issues.

#### *A. What Categories of Changes Are We Making?*

##### 1. Adding an "Implementation and Enforcement" Section

The first category of changes involves adding a section that describes non-delegable authorities or changing current delegation sections to conform to a consistent format. The new "Implementation and enforcement" sections cite the rule sections or requirements for which you may not approve alternatives (*i.e.*, non-delegable authorities). The authority to make changes to those sections or requirements is retained by us and includes the authority to approve any alternatives to emissions standards; including their applicability requirements. Conversely, any authority, not expressly reserved for us and included in these paragraphs, can be delegated to you.

As part of the subpart E rulemaking (65 FR 55810, September 14, 2000), we clarified which of the specific General Provisions authorities (regarding alternative requirements) could not be delegated to you. We divided the General Provisions discretionary authorities into two groups, based upon the relative significance of each type of decision. Category I contains those authorities which can be delegated. We believe that the EPA Regional Office retains the ability to request review of these decisions, although we expect that this authority will be exercised infrequently. Category II contains those authorities which cannot be delegated. For more discussion on the general provisions' delegable authorities, *see* 67 FR 2288, January 16, 2002. The changes in the individual subparts in today's rule reference the subpart E classifications to ensure that they conform with this similar framework.

##### 2. Reorganizing Sections To Separate Compliance Assurance Measures From Actual Standards

The NESHAP contain two major types of requirements: standards and compliance assurance requirements. The standards are the essential requirements that implement EPA's authority under the Act to establish hazardous air pollutant (HAP) emission standards. These standards may be

emission limitations (emission limits, operating limits, opacity limits, and visible emission limits) and/or work practice standards (design, equipment, work practices, and operational standards). The authority to approve alternatives to any of the promulgated standards must be retained by us. Requirements that are essential to ensuring that the standards are achieved as EPA intended, such as applicability requirements and compliance dates, are also retained.

The compliance assurance requirements are also essential, but they offer some flexibility in their implementation. For example, you can approve (or disapprove) minor and intermediate changes to testing, monitoring, reporting, and recordkeeping provisions, as long as they are at least as stringent (or disapprove, if they are not as stringent) as EPA requirements.

In other cases, the S/L/T is given authority to make changes in the implementation of a requirement, but not to change the actual requirement itself. For example, some NESHAP require operation and maintenance plans. Here the S/L/T agency is given the authority to approve some changes in the content of the plan, but does not have the authority to waive the requirement that the plan must be created and followed. Additionally, some newly-named operation and maintenance sections contain provisions which are similar to work practices, in that they can potentially affect emissions, such as the requirement to operate and maintain the source's equipment in keeping with good air pollution control practices, or the requirement to correct malfunctions as soon as practicable. You may not approve alternatives that are less stringent than the criteria outlined in the subpart. However, you may require more stringent provisions, such as not permitting excess emissions at all during malfunctions. Where an operations and maintenance plan is required, it usually allows the source considerable latitude in designing the plan, so long as the plan meets certain criteria. You may approve alternatives to the plan that are more stringent than the criteria listed, but you may not approve elimination of major criteria, such as specifying the process and control system monitoring equipment.

As a second example, most NESHAP include requirements to monitor certain specified control equipment operating parameters and to set enforceable operating limits for these same parameters based on data from the performance test. In this case, the S/L/

T may be delegated the authority to approve changes to the ranges for the operating limits based on new performance test data and/or other relevant information submitted by the source. However, we must retain the authority to approve modifications to requirements affecting which parameters are monitored (*e.g.*, EPA would approve appropriate parameters to monitor for a control device not addressed in a NESHAP).

A more detailed discussion and additional examples of changes that may be made to the delegable requirements are presented in the preambles to the proposed and final subpart E rule (64 FR 1880, January 12, 1999) and (65 FR 55822, September 14, 2000).

In most NESHAP, the non-delegable authorities and the delegable authorities are separated into different sections of the rule. However, in a few NESHAP, these authorities are mixed within a single section or are in the standard section in some NESHAP. In this case, we identified and separated out (where possible) the paragraphs that contain requirements for which you may not approve alternatives in the "Implementation and enforcement" section.

In other NESHAP, the delegable and non-delegable authorities are not clearly separated into different sections or into different paragraphs within a standards section. In these cases, we restructured the standards sections to separate the delegable and non-delegable authorities. This restructuring was accomplished by moving the delegable authorities to more appropriate sections of the rule, such as "Monitoring requirements" or "Recordkeeping requirements" sections. As a result, the "Implementation and enforcement" section more clearly shows which authorities you may not be delegated by simply listing the sections containing those authorities.

##### 3. Minor Work Practices' Amendments To Allow Approval of Alternatives Without EPA Rulemaking

In some MACTs, provisions for which you could or should have the authority to approve alternatives are written in a way that precludes you from approving alternatives to these practices. Authority to approve alternatives to work practice standards or any other emission limitation established under section 112(d) or (h) of the Act cannot be delegated to you. However, some work practice requirements could be written more broadly to allow alternative practices to be implemented or these work practice requirements could be