

subject to whatever rule applies to the new primary product. In the absence of earlier declarations that production of the primary product has ceased, not making the primary product for a period of 5 years will be considered evidence that manufacturing of the primary product has ceased.

Comment: Several commenters requested that we make sure there is no overlap between the OLD MACT and 40 CFR part 63, subpart FFFF. Several commenters also asked for clarification of how to comply when there is overlap between subparts FFFF and HHHHH.

Response: The preamble to the proposed OLD rule stated our intent that all of the distribution sources at miscellaneous organic chemical manufacturing affected sources would be subject only to subpart FFFF, not the OLD rule. The proposed OLD rule also states that those emission sources that are controlled under the provisions of another 40 CFR part 63 NESHAP would not be part of the OLD affected source. Our position on this issue has not changed, and we expect to use the same language in the final OLD rule. Thus, subpart FFFF does not need to address overlap between the OLD rule and subpart FFFF because there will be no overlap.

The final rule handles overlapping requirements between subparts FFFF and HHHHH the same as described above for overlap between subpart FFFF and other part 63 rules. In addition, we have made changes to the definition of miscellaneous organic chemical manufacturing process and to the affected source that are designed to clarify which equipment is subject to subpart FFFF and which is subject to subpart HHHHH.

Comment: Two commenters requested that the final rule allow consolidation of all equipment leak LDAR programs under 40 CFR part 63, subpart FFFF, or any other single program. One of the commenters noted that many facilities are complying with a number of different programs that are effectively equivalent in terms of environmental protection, and consolidation will reduce confusion and eliminate significant enforcement effort by EPA and States in determining which LDAR program applies to which portion of a facility.

Response: The final rule allows for considerable consolidation of LDAR programs and specifies that compliance with subpart FFFF constitutes compliance with 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V. Furthermore, § 63.2535(d) of the final rule specifies that an owner or operator with an affected source under subpart

FFFF and equipment subject to either 40 CFR part 63, subpart GGG or MMM, may elect to comply with subpart GGG or MMM, respectively, for all such equipment. The final rule also allows an owner or operator to elect to comply with the LDAR requirements in 40 CFR part 65, subpart F (*i.e.*, the CAR).

V. 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 entitlement, 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.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a “significant regulatory action” within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information requirements are not enforceable until OMB approves them. The ICR number is 1969.02.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to

NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final NESHAP require maintenance inspections of the control devices but do not require any notifications or reports beyond those required by the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping requirements collect only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 71 labor hours per year at a total annual cost of \$3,150 for 251 respondents. These estimates include one-time submissions of notifications and precompliance reports, preparation of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, preparation of semiannual compliance reports, and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements for the 3-year period of the ICR are estimated at \$256,000 per year. Average operation and maintenance costs associated with the monitoring requirements for the 3-year period are estimated at \$92,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in 40 CFR are in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the