for Monitoring Data Used in Designations for the 2008 Ozone NAAQS'' as a direct final rule on October 6, 2008, 73 FR 58042. The direct final rule revises the schedule for the flagging and submission of documentation of data impacted by exceptional events that may be used for designations under the 2008 ozone National Ambient Air Quality Standards (NAAQS). For a detailed description of the ozone NAAQS and the Exceptional Events Rule, please see the rulemaking actions which are available at EPA's Web sites at *http://www.epa.gov/groundlevelozone/actions.html* and *http://www.epa.gov/EPA-AIR/2008/October/Day-06/a23520.htm* and also in the **Federal Register** at 73 FR 16436 and 73 FR 58042.

We stated in the direct final rule amendments that if we received adverse comment by November 20, 2008, we would publish a timely notice of withdrawal in the **Federal Register**. We received an adverse comment on the direct final rule amendments on November 20, 2008. Because EPA received adverse comment, we are withdrawing the direct final rule amendments to ''The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule): Revised Exceptional Event Data Flagging Submittal and Documentation Schedule to Support Initial Area Designations for the 2008 Ozone NAAQS'' published in the **Federal Register** on October 6, 2008 (73 FR 58042), as of December 16, 2008. EPA will address adverse comments received in a subsequent final action based on the parallel proposal also published on October 6, 2008. As stated in the parallel proposal, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: December 10, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator.

PART 50—[AMENDED]

■ Accordingly, the amendments to the rule published in the **Federal Register** on October 6, 2008 (73 FR 58042) on pages 58042–58047 are withdrawn as of December 16, 2008.

[FR Doc. E8–29747 Filed 12–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2007–0211; FRL–8752–5]

RIN 2060–AO16

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (Acetal Resins Production and Hydrogen Fluoride Production) (Risk and Technology Review)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule responds to public comments received on the proposed rule and announces our decision not to revise four national emission standards for hazardous air pollutants that regulate eight industrial source categories evaluated in our risk and technology review. The four national emission standards and eight industrial source categories are: National Emissions Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, and Neoprene Rubber Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Acetal Resins Production and National Emission Standards for Hazardous Air Pollutants for Hydrogen Fluoride Production. The underlying national emission standards that were reviewed in this action limit and control hazardous air pollutants.

On December 12, 2007, we proposed not to revise the national emission standards based on our residual risk assessment and technology review. After conducting risk and technology reviews, and after considering public comments on the proposed rule, we conclude no additional control requirements are warranted under section 112(f)(2) or 112(d)(6) of the Clean Air Act at this time.

DATES: This final action is effective on December 16, 2008.

ADDRESSES: We have established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0211. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Docket ID No. EPA–HQ–OAR–2007–0211, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Mary Tom Kissell, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–4516; *fax number:* (919) 685–3219; and *e-mail address: kissell.mary@epa.gov.* For specific information regarding the modeling methodology, contact Ms. Elaine Manning, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–5499; *fax number:* (919) 541–0840; and *e-mail address: manning.elaine@epa.gov.* For information about the applicability of these four national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR GROUP I POLYMERS AND RESINS, GROUP II POLYMERS AND RESINS, ACETAL RESINS PRODUCTION, AND HYDROGEN FLUORIDE PRODUCTION

NESHAP for:	OECA contact [1]	OAQPS contact [2]
Polymers and Resins, Group I	Scott Throwe (202) 564–7013 *throwe.scott@epa.gov*	David Markwordt (919) 541–0837 *markwordt.david@epa.gov*.
Polymers and Resins, Group II ...	Scott Throwe (202) 564–7013 *throwe.scott@epa.gov*	Randy McDonald (919) 541–5402 *Mcdonald.randy@epa.gov*.
Acetal Resins Production	Marcia Mia (202) 564–7042 *mia.marcia@epa.gov*	David Markwordt (919) 541–0837 *markwordt.david@epa.gov*.
Hydrogen Fluoride Production	Marcia Mia (202) 564–7042 *mia.marcia@epa.gov*	Bill Neuffer (919) 541–5435 *neuffer.bill@epa.gov*.

[1] OECA stands for the EPA's Office of Enforcement and Compliance Assurance.
[2] OAQPS stands for EPA's Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION: *Regulated Entities*. The eight regulated industrial source categories that are the subject of this final action are listed in Table 2 to this preamble.

TABLE 2—EIGHT INDUSTRIAL SOURCE CATEGORIES

Category	NAICS [1] code	MACT [2] code
Butyl Rubber Production	325212	1307
Ethylene-Propylene Rubber Production	325212	1313
Polysulfide Rubber Production	325212	1332
Neoprene Production	325212	1320
Epoxy Resins Production	325211	1312
Non-nylon Polyamides Production	325211	1322
Acetal Resins Production	325211	1301
Hydrogen Fluoride Production	325120	1409

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any of these NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed and promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action in the **Federal Register**, *i.e.*, by February 17, 2009. Under section 307(b)(2) of the CAA, the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides that EPA shall convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) of the CAA calls for us to promulgate NESHAP for those sources. ''Major sources'' are those that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year of a single HAP or 25 tons per year of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

The MACT ''floor'' is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

EPA is then required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6). In this final rule, we are publishing the results of our 8-year technology review for the eight industrial source categories listed in Table 3, which we have collectively termed ''Group 1.''

The second stage in standard-setting focuses on reducing any remaining ''residual'' risk according to CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity of emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine for source categories subject to certain CAA section 112(d) standards whether the emissions limitations provide an ample margin of safety to protect public health. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health. In doing so, EPA may adopt standards equal to existing MACT standards (*NRDC* v. *EPA,* No. 07–1053, slip op. at 11, District of Columbia Circuit, decided June 6, 2008). EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety, and other relevant factors in doing so. Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of ''ample margin of safety'' developed in the National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989).

The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is required to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) directs us to use the interpretation set out in the Benzene NESHAP. See also, A Legislative History of the Clean Air Act Amendments of 1990, volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the Residual Risk Report to Congress that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [i.e. , 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, ''The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' The Agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.'' As explained more fully in our Residual Risk Report to Congress, EPA does not define ''rigid line[s] of acceptability,'' but considers rather broad objectives to be weighed with a

[1] ''Adverse environmental effect'' is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may reasonably be anticiipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (Residual Risk Report to Congress, p. 178, quoting the *Vinyl Chloride* decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable.'' 54 FR at 38045. We discussed the maximum individual lifetime cancer risk (MIR) as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' Id. We explained that this measure of risk ''is an estimate of the upperbound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' Id. We acknowledge that MIR ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded.'' Id.

Understanding that there are both benefits and limitations to using MIR as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' Id. Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of MIR, but does not constitute a rigid line for making that determination.

The Agency also explained in the 1989 Benzene NESHAP the following: ''In establishing a presumption for MIR, rather than rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.'' Id.

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by MIR alone.

As explained in the Benzene NESHAP, ''[e]ven though the risks judged ''acceptable'' by EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an ''ample margin of safety,'' again includes consideration of all of the health factors, and whether to reduce the risks even further. In the second step, EPA strives to provide protection to the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million. In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112.'' 54 FR 38046.

B. Overview of the Four NESHAP

The eight industrial source categories and four NESHAP that are the subject of this action are listed in Table 3 to this preamble. The NESHAP limit and control HAP that are known or suspected to cause cancer or have other serious human health or environmental effects. The NESHAP for these eight source categories generally required implementation of technologies such as steam strippers and incineration.

TABLE 3—LIST OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Title of NESHAP	Source categories affected by this final action	Promulgated rule reference and code of federal regulations citation	Compliance date	NESHAP as referred to in this preamble
NESHAP for Group I Polymers and Resins [1].	Polysulfide Rubber Production	61 FR 46905 (09/05/1996)	07/31/1997	Polymers and Resins I.
	Ethylene Propylene Rubber Production.	40 CFR part 63, subpart U		
	Butyl Rubber Production.			
	Neoprene Production.			
NESHAP for Epoxy Resins Production and Non-nylon Polyamides Production.	Epoxy Resins Production	60 FR 12670 (03/08/1995)	03/03/1998	Polymers and Resins II.
	Non-nylon Polyamides Production	40 CFR part 63, subpart SS		
NESHAP for GMACT [2]	Acetal Resins Production	64 FR 34853 (06/29/1999)	06/29/2002	GMACT.
	Hydrogen Fluoride Production	40 CFR part 63, subparts TT, UU, WW, and YY.		

[1] The Polymers and Resins I NESHAP regulates nine source categories. We performed the residual risk and technology review (RTR) for four of them for this action. We will address the remaining five source categories in a separate RTR rulemaking.

[2] The source categories subject to the standards in the generic maximum achievable control technology (GMACT) NESHAP are Acetal Resins Production and Hydrogen Fluoride Production.

1. Polymers and Resins I

The Polymers and Resins I NESHAP regulates HAP emissions from major sources in nine source categories. In this action, we address four of the Polymer and Resins I sources categories—Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, and Neoprene Production. The other five source categories are addressed in RTR Group 2A (73 FR 60432, October 10, 2008).

HAP emissions from these processes can be released from storage tanks, process vents, equipment leaks, and wastewater operations.

a. *Polysulfide Rubber Production.* Polysulfide rubber is a synthetic rubber

produced by the reaction of sodium sulfide and p-dichlorobenzene (1,4-dichlorobenzene) at an elevated temperature in a polar solvent. Polysulfide rubber is resilient, resistant to solvents, and has low temperature flexibility, facilitating its use in seals, caulks, automotive parts, rubber molds for casting sculpture, and other products.

b. *Ethylene Propylene Rubber Production.* Ethylene propylene elastomer is an elastomer prepared from ethylene and propylene monomers. Common uses for these elastomers include radiator and heater hoses, weather stripping, door and window seals for cars, construction plastics blending, wire and cable insulation and jackets, and single-ply roofing membranes.

c. *Butyl Rubber Production.* Butyl rubber is comprised of copolymers of isobutylene and isoprene and is very impermeable to common gases and resists oxidation. A specialty group of butyl rubbers are halogenated butyl rubbers, which are produced commercially by dissolving butyl rubber in hydrocarbon solvent and contacting the solution with gaseous or liquid elemental halogens such as chlorine or bromine. Halogenated butyl rubber resists aging to a higher degree than the nonhalogenated type and is more compatible with other types of rubber. Uses for butyl rubber include tires, tubes, and tire products; automotive mechanical goods; adhesives, caulks, and sealants; and pharmaceutical uses.

d. *Neoprene Production.* Neoprene is a polymer of chloroprene. Neoprene was originally developed as an oil-resistant substitute for natural rubber, and its properties allow its use in a wide variety of applications, including wetsuits, gaskets and seals, hoses and tubing, plumbing fixtures, adhesives, and other products.

2. Polymers and Resins II

The Polymers and Resins II NESHAP regulates HAP emissions from major sources in two source categories—epoxy resins and non-nylon polyamides production. In this action, we address both of the Polymer and Resins II sources categories—Epoxy Resins Production and Non-nylon Polyamides Production. HAP emissions from these source categories can be released from storage tanks, process vents, equipment leaks, and wastewater operations.

a. *Epoxy Resins Production.* The Epoxy Resins Production source category involves the manufacture of basic liquid epoxy resins used in the production of glues, adhesives, plastic parts, and surface coatings. This source category does not include specialty or modified epoxy resins.

b. *Non-Nylon Polyamides Production.* The Non-Nylon Polyamides Production source category involves the manufacture of epichlorohydrin cross-linked non-nylon polyamides used primarily by the paper industry as an additive to paper products. Natural polymers, such as those contained in paper products, have little cross-linking, which allows their fibers to change position or separate completely when in contact with water. The addition of epichlorohydrin cross-linked non-nylon polyamides to these polymers causes the formation of a stable polymeric web among the natural fibers. Because the polymeric web holds the fibers in place even in the presence of water, epichlorohydrin cross-linked non-nylon polyamides are also referred to as wet-strength resins.

3. GMACT—Acetal Resins Production

The GMACT set national emission standards for certain source categories consisting of five or fewer facilities. The basic purpose of the GMACT approach was to use public and private sector resources efficiently, and to promote regulatory consistency and predictability in the MACT standards development.

Acetal resins are characterized by the use of formaldehyde in the polymerization process to manufacture homopolymers or copolymers of alternating oxymethylene units. Acetal resins, also known as polyoxymethylenes, polyacetals, or aldehyde resins, are a type of plastic possessing relatively high strength and rigidity without being brittle. They have good frictional properties and are resistant to moisture, heat, fatigue, and solvents. Acetal resins are used as parts in a variety of industrial applications, e.g., gears, bearings, bushings, and various other moving parts in appliances and machines, and in a range of consumer products, e.g., automotive door handles, seat belt components, plumbing fixtures, shaver cartridges, zippers, and gas tank caps.

4. GMACT—Hydrogen Fluoride Production

The Hydrogen Fluoride Production source category includes any facility engaged in the production and recovery of hydrogen fluoride by reacting calcium fluoride with sulfuric acid. Hydrogen fluoride is used in the production of other compounds, including pharmaceuticals and polymers. In aqueous solution hydrogen fluoride can be a strong acid.

C. What was the proposed action?

On December 12, 2007 [2], based on the findings from our RTR, we proposed no revisions to the four NESHAP regulating the eight source categories listed in Table 3 and requested public comment.

D. What are the conclusions of the residual risk assessment?

As required by section 112(f)(2) of the CAA, we prepared a risk assessment for each of the eight source categories addressed in this action to determine the residual risk posed after implementation of the respective NESHAP. To evaluate the residual risk for each source category, EPA conducted an inhalation risk assessment [3] that provided estimates of MIR, cancer risk distribution within the exposed populations, cancer incidence, hazard indices (HI) for chronic exposures to HAP with non-cancer health effects, and hazard quotients (HQ) for acute exposures to HAP with non-cancer health effects. The risk assessment consisted of six primary activities: (1) Establishing the nature and magnitude of emissions from the sources of interest, (2) identifying the emissions release characteristics (e.g., stack parameters), (3) conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (4) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources, (5) estimating individual and population-level risks using the exposure estimates and quantitative dose-response information, and (6) characterizing risk. In general, the risk assessment followed a tiered, iterative approach, beginning with a conservative (worst case) screening-level analysis and, where the screening analysis indicated the potential for non-negligible risks, following that with more refined analyses.

[2] *See* 72 FR 70543.

[3] For more information on the risk assessment inputs and models, *see* ''Residual Risk Assessment for Eight Source Categories,'' available in the docket.

The human health risks estimated for the eight source categories are summarized in Table 4.

TABLE 4—SUMMARY OF ESTIMATED INHALATION RISKS FOR THE EIGHT SOURCE CATEGORIES

Source category	Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2] (and HAP contributing most to estimate)	Estimated annual cancer incidence (and HAP contributing most to estimate)	Maximum chronic HI [3] (and HAP contributing most to estimate)	Maximum off-site acute HQ and HAP for which HQ was calculated [4]
Polysulfide Rubber Production.	1	0 [6]	0 [6]	<0.01 (MDI [5])	HQ_{ERPG-1}=0.0004 (MDI [4]).
Ethylene Propylene Rubber Production.	5	0 [6]	0 [6]	0.5 (hexane)	HQ_{REL}=0.3 (toluene).
Butyl Rubber Production	2	0 [6]	0 [6]	0.2 (methyl chloride)	HQ_{ERPG-2}=0.1 (methyl chloride [7]).
Neoprene Production	1	0 [6]	0 [6]	0.8 (chloroprene)	HQ_{REL}=0.4 (toluene).
Epoxy Resins Production.	3	0.1 (epichlorohydrin)	0.00002 (epichlorohydrin).	0.08 (epichlorohydrin)	HQ_{REL}=0.6 (epichlorohydrin).
Non-nylon Polyamides Production.	4	0.4 (epichlorohydrin)	0.00003 (epichlorohydrin).	0.3 (epichlorohydrin)	HQ_{REL}=0.2 (epichlorohydrin).
Acetal Resins Production.	3	0.3 (allyl chloride)	0.00004 (allyl chloride)	0.2 (chlorine)	HQ_{REL}=2 HQ_{AEGL-1}=0.1 (formaldehyde).
Hydrogen Fluoride Production.	2	0 [6]	0 [6]	<0.01 (hydrofluoric acid).	HQ_{REL}=0.3 (hydrofluoric acid).

[1] Number of facilities believed to be in the source category and used in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum hazard index (HI) is maximum respiratory HI for all except two source categories. Maximum HI for butyl rubber production is based on neurological effects. Maximum HI for hydrogen fluoride production is based on skeletal effects.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. These include reference exposure level (REL) and ERPG–1 and ERPG–2 values. The superscript indicates the value to which the acute exposure estimate was compared. The acute REL is defined by CalEPA as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration is termed the reference exposure level (REL). REL are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. REL are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Since margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.'' The American Industrial Hygiene Association defines the ERPG–1 as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor'', and the ERPG–2 as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' The National Advisory Committee for Acute Exposure Guidelines defines AEGL–1 as ''AEGL–1 is the airborne concentration (expressed as ppm or mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.''
[5] MDI is methylene diphenyl diisocyanate.
[6] No HAP that are known, probable, or possible human carcinogens are emitted from sources in the category.
[7] For methyl chloride, REL, and AEGL–1 were not available.

As shown in Table 4, we estimate that the HAP emissions from the eight source categories affected by this final action do not pose cancer risks equal to or greater than 1-in-1 million to the individual most exposed, do not result in meaningful rates of cancer incidence, and do not result in a concern regarding either chronic or acute noncancer health effects for the individual most exposed.

In addition, no chronic inhalation human health thresholds were exceeded at environmental receptors for any of the eight source categories. As we stated in the preamble to the proposal, we generally believe that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. Only hydrogen fluoride among those emitted by these facilities has a potential concern for adverse environmental effects, based on a consideration of studies in the literature. Accordingly, we posed the question in the preamble to the proposal whether hydrogen fluoride emissions impacted vegetation in the vicinity of the two facilities in the hydrogen fluoride category. No comments were received. We have concluded that for all facilities in categories addressed in this rulemaking, there is low potential for adverse environmental effects due to direct airborne exposures. We also believe that there is no potential for an adverse effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.13(a) because our screening analyses indicate no potential for any adverse ecological impacts.

Human health multipathway risks were determined not to be a concern for the eight source categories addressed in this action due to the absence of persistent and bioaccumulative (PB) [4] HAP emissions at all of these sources. The lack of PB HAP emissions also provides assurance that there will be no potential for adverse ecological effects due to indirect ecological exposures (*i.e.*, exposures resulting from the deposition of PB HAP from the atmosphere).

As a result of these findings, we proposed no additional controls under the residual risk review requirements of CAA section 112(f)(2). As EPA has not received evidence which would alter our proposed decision, we conclude in this rulemaking, as proposed, that no additional control is required because

[4] Persistent and bioaccumulative (PB) HAP are the list of 14 HAP that have the ability to persist in the environment for long periods of time and may also have the ability to build up in the food chain to levels that are harmful to human health and the environment.

the four NESHAP regulating the eight source categories addressed in this action provide an ample margin of safety to protect public health and to prevent an adverse environmental effect.

E. What are the conclusions of the technology review?

Section 112(d)(6) of the CAA requires EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emissions standards promulgated under CAA section 112 no less often than every 8 years. As we explained in our CAA section 112(d)(6) determination for the HON (71 FR 34437 and affirmed at 71 FR 76606),

> [a]lthough the language of section 112(d)(6) is nondiscretionary regarding periodic review, it grants EPA much discretion to revise the standards ''as necessary.'' Thus, although the specifically enumerated factors that EPA should consider all relate to technology (*e.g.*, developments in practices, processes and control technologies), the instruction to revise ''as necessary'' indicates that EPA is to exercise its judgment in this regulatory decision, and is not precluded from considering additional relevant factors, such as costs and risk. EPA has substantial discretion in weighing all of the relevant factors in arriving at the best balance of costs and emissions reduction and determining what further controls, if any, are necessary. This interpretation is consistent with numerous rulings by the U.S. Court of Appeals for the DC Circuit regarding EPA's approach to weighing similar enumerated factors under statutory provisions directing the Agency to issue technology-based standards. See, *e.g., Husqvarna AB* v. *EPA*, 254 F.3d 195 (DC Cir. 2001). For example, when a section 112(d)(2) MACT standard alone obtains protection of public health with an ample margin of safety and prevents adverse environmental effects, it is unlikely that it would be ''necessary'' to revise the standard further, regardless of possible developments in control options.[5] Thus, the section 112(d)(6) review would not need to entail a robust technology assessment.

We completed the CAA section 112(d)(6) review for the eight RTR Group 1 source categories, and, as in our proposal, we concluded that there have been no significant developments in practices, processes, or control technologies since promulgation of the MACT standards for the eight RTR Group 1 source categories. Thus, we proposed no additional controls were required under the technology review requirements of CAA section 112(d)(6).

We have not received information that controverts that conclusion. Therefore, we conclude, as we did in the proposed rule, that no revisions are required per the provisions of CAA section 112(d)(6).

II. Summary of Comments and Responses

In the proposed action, we requested public comment on our residual risk reviews and our technology reviews for the eight source categories listed in Table 3. We received comments from four commenters. The commenters included one state and local agency association, two industry trade associations, and representatives of one individual company. The comments are summarized and our responses to adverse comments are provided below.[6] After considering the public comments, we concluded it was unnecessary to change our risk or technology reviews or analyses or our determination that the existing MACT standards for these eight source categories are sufficient under sections 112(d)(6) and (f)(2) of the CAA.

A. Emissions Data

Comment: One commenter expressed concern over the emissions and emissions release characteristic data the Agency used in its analyses, noting that the proposal did not explain why state and local air agency data were not included for source categories where EPA primarily relied upon industry-supplied data. The commenter recommends that EPA consider expanding the data set to include state and local information. The other three commenters believe the data are representative for the RTR Group 1 source categories, although one of them suggested EPA should discount the value of emissions inventory data that have not undergone a quality assurance review.

Response: For the residual risk assessments, we use the best information available to perform our analyses. The EPA collects facility-specific emissions and emissions release characteristic information from state and local agencies periodically, which is then put into a database called the National Emissions Inventory (NEI). This information is reviewed by EPA engineers. The information contained in this database is often the best source of information available to us and it typically provides the essential parameters for our residual risk analyses. However, there are limitations to this database, in that the quality of the data submitted by state and local air agencies varies. Some parameters in the NEI are not provided by all state and local air agencies, which means that these parameters are sometimes blank or are filled in with default values. In addition, if process or other changes occur at facilities that do not affect their permits, state or local air agencies may not be aware of these changes, and subsequently do not submit changes or updates to the emissions for those facilities.

To analyze risk for these eight source categories, we were able to use emissions and emissions release characteristic data obtained directly from industry except for the hydrogen fluoride source category for which the data were obtained directly from industry and from the State of Louisiana. Based on our own technical review of these data, we believe these data are the most accurate data available, and where available, we used them for our analyses. All of the emissions and emissions release characteristic data were made available for public review at the time of the proposal. State and local air agencies, as well as other members of the public, were invited to provide comments on the data. We would have considered any substantive comments regarding the accuracy of the data before promulgating today's decision not to require new or additional standards; however, other than the data from Louisiana and one minor comment, addressed below, no such comments were received from any of the state or local air agencies, or from any other commenter. Therefore, no significant changes to the data have been made.

On June 6, 2008, the United States Court of Appeals for the District of Columbia (the Court) upheld as reasonable EPA's use of industry data, in that case, where EPA demonstrated that such data enabled the Agency to assess risk remaining after application of the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (HON)[7], and noted that ''EPA has wide latitude in determining the extent of data-gathering necessary to solve a problem.''[8]

Comment: One commenter recommended that EPA include emissions from startup/shutdown and

[5] Although EPA might still consider developments that could substantially reduce or eliminate risk in a cost-effective manner.

[6] *See* ''Summary of Public Comments and Responses for RTR Group 1'' for other comment summaries and responses.

[7] Proposed and final National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (HON) residual risk rules (71 FR 34421, June 14, 2006, and 71 FR 76603, December 21, 2006, respectively).

[8] *See* page 17 of the Court Opinion. The Court's opinion was issued in response to petition received on the final HON RTR. The Court's opinion, the proposal and final HON RTR rules, and EPA's Brief for the Respondent are in the RTR Group 1 docket (Docket ID No. EPA–HQ–OAR–2007–0211).

malfunctions (SSM) in its analysis, as they are the cause of significant HAP emissions and not including them underestimates true risks.

Response: Emission releases from SSM events are typically infrequent and of short duration compared to annual emissions. Startup and shutdown events [9] usually coincide with routine equipment maintenance or upset conditions, or with an initial startup of a process. Malfunction events are sudden and infrequent and must be corrected as soon as practicable after their occurrence. 40 CFR 63.6(e), which generally applies to all MACT rules in part 63, requires the owner or operator of a facility to reduce emissions from the affected source during periods of SSM to the greatest extent which is consistent with safety and good air pollution control practices.

We believe SSM events do not contribute significantly to cancer or chronic noncancer risks for the RTR Group 1 source categories because SSM events are inherently short-term and infrequent relative to annual operations and emissions. The commenter did not supply data. In addition, cancer and chronic noncancer risk for the RTR Group 1 source categories are low. All the RTR Group 1 source categories have a MIR less than 1-in-1 million and an HI less than 1: emissions from SSM events would have to be greater than double the annual emission levels to result in MIR greater than 1-in-1 million or HI greater than 1, and this is improbable.

To better assess SSM emissions, we analyzed SSM emissions of HAP from all major industries (primarily petroleum refineries and chemical manufacturers) in five counties in southeast Texas.[10] Our analysis of these data indicates that multiplying the annual average hourly emission rate by a factor of 10 to estimate the worst-case hourly emission rate would account for 99 percent of the reported SSM emission rates. As a result, we apply this default factor of 10 to screen for potential acute impacts of concern for all RTR source categories. In this case, use of this factor screened out potential acute impacts from all RTR Group 1 source categories except for a few facilities from the Acetal Resins Production and Hydrogen Fluoride Production source categories.

For acetal resins production and hydrogen fluoride production, we applied a source category-specific factor of 2 times the average hourly rate for hydrogen fluoride production and 1.5 times the average hourly rate for acetal resins production to estimate the worst-case hourly emission rate. These factors are derived from industry data and one state that show the peak hourly emissions that have been recorded. Applying these multipliers to our screening scenario eliminated concern for the Hydrogen Fluoride Production source category and reduced the estimated maximum projected acute impact of 1-hour formaldehyde concentrations at any acetal resins production facility to approximately twice the reference exposure level (HQ_{REL}=2), and approximately one-tenth the Acute Exposure Guideline Level (HQ_{AEGL-1}=0.1). The REL is a ''concentration level at or below which no adverse health effects are anticipated for a specified exposure duration,'' and ''exceeding the REL does not automatically indicate an adverse health impact.'' Furthermore, we believe that the likelihood of worst-case meteorological conditions occurring at the same time as a significant upset event and at the location where human exposure is the greatest is improbable. Therefore, considering the value of the maximum HQ along with the improbability of the convergence of worst-case SSM emissions (which we believe to be infrequent events), worst-case meteorological conditions and worst-case human exposure, we determined that this outcome did not warrant cause for concern.

Comment: One commenter noted that they had provided minor updates to emissions and modeling parameters for three facilities on November 19, 2004, and again in the fall of 2007, but noticed that these updates were not included in the documentation. The commenter noted that the updates will have no effect on the cancer MIR modeling and only a minor impact on the HI, and requested that EPA use the updated information if it determines additional modeling runs are necessary.

Response: We regret this error and have incorporated these changes into the datasets for these source categories. As these changes were very minor, we did not re-model with the updated versions of the data, as a review of the updated data showed that the risk results would not be affected to any appreciable degree.

Comment: We received comment both in favor of and objecting to the use of reported ''actual'' emissions in our analyses. The commenters in favor of this approach felt actual emissions provide more realistic estimates of risk. In contrast, one commenter thought actual emissions and associated impacts could increase over time, and analyses based on these emissions underestimate residual risk and are inconsistent with the applicability sections of the MACT standards.

Response: We have discussed the use of both MACT allowable emissions and actual emissions in previous actions, including the final National Emission Standards for Coke Oven Batteries residual risk rule and the proposed and final HON residual risk rules.[11] In those previous actions, we noted that modeling the MACT allowable levels of emissions (i.e., the highest emission levels that could be emitted while still complying with the NESHAP requirements) is inherently reasonable since they reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. We recognize that facilities strive to achieve greater emissions reductions than required by MACT to allow for process variability and to prevent exceedances of standards due to emissions increases on individual days. Thus, failure to consider actual emissions estimates in

[9] All three terms are defined in 40 CFR 63.2. ''Malfunction'' means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. ''Shutdown'' means the cessation of operation of an affected source or portion of an affected source for any purpose. ''Startup'' means the setting in operation of an affected source or portion of an affected source for any purpose. And from the 2002 General Provisions for 40 CFR Part 63 BID for Promulgated Amendments [EPA–453/R–02–002], ''shutdown'' specifically means only the process of shutting off equipment or a process, and does not refer to the period of non-operation. Thus, during this period when a process is offline or between production runs, the source must meet the standard, including emission limits, as well as monitoring, recordkeeping, and reporting requirements.

[10] Our analysis of the SSM data on upset emissions (reported over an 11 month period in 2001) from the Houston, Texas area showed that SSM emissions for facilities in this area typically total significantly less than 15 percent of annual routine emissions, thereby minimizing their potential to increase chronic health risks to any significant degree. See Appendix 4 to ''Residual Risk Assessment for Eight Source Categories: Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production, Epoxy Resins Production, Non-nylon Polyamides Production, Hydrogen Fluoride Production, Acetal Resins Production'' (July 2008), which is available in the RTR Group 1 docket.

[11] *See* final National Emission Standards for Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and the proposed and final HON residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76603, December 21, 2006, respectively.

risk assessments could unrealistically inflate estimated risk levels because actual emissions estimates represent the typical practices of a facility.

We followed this approach for our analysis for the eight source categories. As explained in the preamble to the proposed rule, we evaluated whether allowable emissions would significantly vary from actual emissions. We concluded that actual emissions approximated allowable levels for all eight source categories and, thus, were sufficient for our review. 72 FR 70549–50. We received no comments that suggested or provided data indicating that actual emissions do not approximate the allowable levels for these eight source categories.

B. Risk Assessment Methodology

Comment: Comments were received arguing that the Agency's proposed quantified risks are over-estimated due to the conservative approach used in predicting risks, which included the use of upper bound unit risk estimates (URE) for cancer and a 70-year exposure assumption.

Response: We acknowledge that the use of upper bound URE and 70-year exposure duration are sources of uncertainty in our analyses that tend to overestimate risk. In general, EPA considers the URE to be an upper bound estimate based on the method of extrapolation, meaning it represents a plausible upper limit to the true value. The true risk is, therefore, likely to be less, though it could be greater, and could be as low as zero. With regard to exposure duration, we acknowledge that we did not address long-term population mobility (residence time or exposure duration) in this assessment or population growth or decline over 70 years, instead basing our assessment on the assumption that each person's predicted exposure is constant over the course of a 70-year lifetime.

As explained in our risk assessment, three metrics are generally estimated in assessing cancer risk: the MIR, the population risk distribution, and the cancer incidence. Our failure to consider short- or long-term population mobility does not bias our estimate of the theoretical MIR. (Note that the Benzene NESHAP states that the MIR ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded.'' [12]) Our estimates of cancer incidence also are not influenced by our population mobility assumptions, although both the length of time that modeled emissions sources at facilities actually operate (i.e., more or less than 70 years), and the domestic growth or decline of the modeled industry (i.e., the increase or decrease in the number or size of United States facilities), will influence the cancer incidence associated with a given source category.

Our population mobility (residence time or exposure duration) assumption does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby biasing the risk estimates high.

While the approach we use for our screening analysis is conservative, we note that where our screening analysis indicates a potential for risk, we then perform additional, more refined analyses that more closely approximate the true risk from sources that do not ''screen-out.''

Comment: We received comments both in favor of and objecting to the use of census block centroids in the analysis of chronic exposure and risk. One commenter argued that the use of the census block centroid dilutes the effect of sources' emissions, as the maximum point of impact can be far from the centroid and may be at or near a facility's property line, and suggested that the risks for a source category be based on concentrations at the fenceline and beyond and include risks to the maximally exposed individual. In contrast, other commenters felt the use of the census block centroids was appropriate for these source categories, and one commenter added that using the fenceline as a location to estimate risk is inappropriate in risk assessment because people do not generally live at the fenceline, and this approach would overstate risk.

Response: As we have noted in the development of previous residual risk rulemakings, such as the HON, EPA contends that, in a national-scale assessment of lifetime (chronic) inhalation exposures and health risks from facilities in a source category, it is appropriate to identify exposure locations where it may be reasonably expected that an individual will spend a majority of his or her lifetime, such as a census block centroid. Thus, EPA asserts that it is appropriate to use census block information where people actually reside rather than points on a fence-line, to estimate exposure and risk to individuals living near such facilities when assessing chronic risks. Census blocks are the finest resolution available in the nationwide population data (as developed by the United States Census Bureau); each is typically comprised of approximately 40 people or about 10 households. In EPA risk assessments, the geographic centroid of each census block containing at least one person is used to represent the location where all the people in that census block live. The census block centroid with the highest estimated exposure then becomes the location of maximum exposure, and the entire population of that census block experiences the maximum individual risk. In some cases, because actual residence locations may be closer to or farther from facility emission points than is the census block centroid, this may result in an overestimate or underestimate of the actual annual exposure. Given the relatively small dimensions of census blocks in densely-populated areas, there is little uncertainty introduced by using the census block centroids. There is more uncertainty when census blocks are larger. Recently, EPA used aerial photographs of several facilities to examine the locations of census block centroids and actual residences, and to assess the impact on maximum individual risk of using the census block centroid.[13] In cases where census blocks were small, there was no significant difference in estimated risk. In cases where the census blocks were relatively large, the centroid generally was found to be nearer the facility than the residential locations. Consequently, the risks at the census block centroid typically were higher than the risks at any actual residence. In most of these cases, the census block contained a portion of the facility property, thereby almost necessitating that actual residences be more distant than the block centroid. This result indicates that, if anything, using census block centroids is more likely to overestimate actual maximum individual risks than to underestimate them, although the differences are generally small. EPA believes it is appropriate to estimate chronic exposures and risks based on census block centroids because: (1) Census blocks are the finest resolution available in the national census data, (2) facility fencelines do not typically

[12] National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38045, September 14, 1989).

[13] *See* ''Sensitivity analysis of uncertainty in risk estimates resulting from estimating exposures at census block centroids near industrial facilities'' in RTR Group 1 docket.

represent locations where chronic exposures are likely, and (3) any bias introduced by using census block centroids may overestimate maximum individual risks.

III. Risk and Technology Review Final Decision

This final rule responds to public comments received on the proposed rule and announces our final decision not to revise the standards of the four NESHAP as they apply to the eight RTR Group 1 source categories. We conclude that the NESHAP applicable to each of the eight source categories evaluated in RTR Group 1— Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production, Epoxy Resins Production, Non-Nylon Polyamides Production, Acetal Resins Production, and Hydrogen Fluoride Production— provides an ample margin of safety to protect public health and prevents adverse environmental effects. Therefore, we are re-adopting each of the four RTR Group 1 MACT standards for purposes of meeting the requirements of CAA section 112(f)(2). In addition, we conclude that there have been no developments in practices, processes, or control technologies that support revision of the four MACT standards pursuant to CAA section 112(d)(6) for the eight source categories.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action makes no changes to the existing regulations affecting the eight source categories included in this final action and will impose no additional information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 750 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) regulations at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final decision does not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, and tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action makes no changes to the existing regulations affecting the eight source categories included in this final action; and, therefore, contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This final decision does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Discussion of this action's health and risk assessments are contained in Section I of this preamble.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final decision is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final decision is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No.

104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule would not relax the control measures on sources regulated by the rule and, therefore, would not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rules and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register** . This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on December 16, 2008.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–29789 Filed 12–15–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFEs determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that