Federal Register

Monday,
December 19, 2005

Part III

Environmental Protection Agency

40 CFR Parts 63, 70, and 71
Exemption of Certain Area Sources From Title V Operating Permit Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 70, and 71

[OAR–2004–0010; FRL–8008–5]

RIN 2060–AM31

Exemption of Certain Area Sources From Title V Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to national emission standards for hazardous air pollutants (NESHAP). The EPA is making a finding for these categories, consistent with the Clean Air Act requirement for making such exemptions, that compliance with title V permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the source categories. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. The EPA declines to make a finding for a sixth category, area sources subject to the NESHAP for secondary lead smelters. A previous deferral from permitting for this category expired on December 9, 2004, subjecting all such sources to the title V program.

DATES: This final rule is effective on December 19, 2005.

ADDRESSES: *Docket.* Docket No. OAR–2004–0010, containing supporting information used to develop the proposed and final rules, is available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday (except government holidays) at the Air and Radiation Docket (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division, C304–04, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, or electronic mail at *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The entities affected by this rulemaking are area sources subject to a NESHAP promulgated under section 112 of the Clean Air Act (Act) since 1990, listed in the table below. An "area source" under the NESHAP regulations is a source that is not a "major source" of hazardous air pollutants (HAP). A "major source" under the NESHAP regulations is "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any [HAP] or 25 tons per year or more of any combination of [HAP] * * *" See definitions of "area source" and "major source" at 40 CFR 63.2.

This final rule affects only whether area sources regulated by certain NESHAP are required to obtain a title V operating permit and whether title V permits may be issued to these and other area sources once EPA has promulgated exemptions from title V for them. It has no other effect on any requirements of the NESHAP regulations, nor on the requirements of State or Federal title V operating permit programs.

The affected categories are:

Category	NESHAP	Estimated number of sources [1]
Perchloroethylene dry cleaning	Part 63, Subpart M	[2] 28,000
Hard and decorative chromium electroplating and chromium anodizing	Part 63, Subpart N	5,000
Commercial ethylene oxide sterilization	Part 63, Subpart O	100
Halogenated solvent cleaning	Part 63, Subpart T	3,800
Secondary aluminum production	Part 63, Subpart RRR	1,316
Secondary lead smelting	Part 63, Subpart X	3

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2004–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents are available both electronically and in hard copy. Electronic documents may be obtained through EDOCKET. Hard copy documents may be viewed at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. This docket facility 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 Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/* or the federal-wide eRulemaking site at *http://www.regulations.gov.*

An electronic version of a portion of the public docket is available through EDOCKET at *http://www.epa.gov/edocket/.* To view public comments, review the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Publicly available docket materials that are not available electronically may be

[1] This estimated number includes both major and area sources, even though only area sources will be affected by this rulemaking. Almost all dry cleaners are area sources. Also, EPA believes less than half of EO sterilizers are area sources (see docket item 106). For other categories listed here, EPA does not have information on the number of area sources.

[2] The proposal of March 25, 2005 estimated up to 30,000 dry cleaners would be affected by this rulemaking. Based on new information available to EPA, we now believe up to 28,000 dry cleaners are potentially affected by this rulemaking.

viewed at the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

D. How Is This Preamble Organized?

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II. Background

Section 502(a) of the Clean Air Act (Act) sets forth the sources required to obtain operating permits under title V. These sources include: (1) Any affected source subject to the acid deposition provisions of title IV of the Act; (2) any major source; (3) any source required to have a permit under Part C or D of title I of the Act; (4) "any other source (including an area source) subject to standards or regulations under section 111 [new source performance standards] or 112 [NESHAP]]" and (5) any other stationary source in a category designated by regulations promulgated by the Administrator. See 40 CFR 70.3(a) and 71.3(a). The requirements of section 502(a) are primarily implemented through the operating permit program rules: Part 70, which sets out the minimum requirements for title V operating permit programs administered by State, local, and tribal permitting authorities (57 FR 32261, July 21, 1992), and part 71, the federal operating permit program requirements that apply where EPA or a delegate agency authorized by EPA to carry out a Federal permit program is the title V permitting authority (61 FR 34228, July 1, 1996). The area sources subject to NSPS under section 111 or NESHAP under section 112 [addressed in category (4) above] are identified in §§ 70.3(a)(2) and (3) and §§ 71.3(a)(2) and (3) as among the sources subject to title V permitting requirements.

Section 502(a) of the Act also provides that "the Administrator may, in the Administrator's discretion and consistent with the applicable provisions of [the Clean Air Act], promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements [of title V] if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements."

In the part 70 final rule of July 21, 1992, EPA permanently exempted from title V two categories of area sources that are subject to section 111 and 112 standards established prior to the part 70 rule (pre-1992 standards): New residential wood heaters subject to subpart AAA of part 60 (NSPS), and asbestos demolition and renovation operations subject to subpart M of part 61 (NESHAP). See §§ 70.3(b)(4) and 71.3(b)(4). The EPA also allowed permitting authorities under part 70 the option to defer permitting for other area sources subject to pre-1992 standards, while for part 71 purposes, we simply deferred issuing permits to them. See 57 FR 32261–32263 (July 21, 1992), and §§ 70.3(b)(1) and 71.3(b)(1).

The post-1992 standards, including the NESHAP for area sources that are the subject of today's final rule, previously have been addressed in §§ 70.3(b)(2) and 71.3(b)(2), which state that EPA will determine whether to exempt from title V permitting any or all area sources subject to post-1992 NSPS or NESHAP at the time each new standard is promulgated. Subsequently, EPA issued title V exemptions for several area sources subject to NESHAP in final rules under part 63:

- All area sources within the NESHAP for publicly owned treatment works (POTW), Subpart VVV. See § 63.1592 (63 FR 64742, October 21, 2002).
- Those area sources conducting cold batch cleaning within the NESHAP for halogenated solvent cleaning, Subpart T. See § 63.468(j) (59 FR 61802, December 2, 1994).
- Three types of area sources within the NESHAP for hard and decorative chromium electroplating and chromium anodizing tanks, Subpart T. See § 63.340(e)(1) (61 FR 27785, June 3, 1996).

The EPA has issued three post-1992 NESHAP that defer the requirement for area sources to obtain title V permits:

- Area sources subject to the NESHAP for perchloroethylene dry cleaning, subpart M; chromium electroplating and anodizing, subpart N; commercial ethylene oxide sterilization, subpart O; and secondary lead smelting, subpart X. See 61 FR 27785, June 3, 1996;
- Area sources subject to the NESHAP for halogenated solvent cleaning, subpart T. See 59 FR 61801, December 2, 1994, as amended by 60 FR 29484, June 5, 1995; and
- Area sources subject to the NESHAP for secondary aluminum production, subpart RRR. See 65 FR 15690, March 23, 2000.

The first two rules established deferrals of area source permitting, which expired on December 9, 1999. The expiration date for these deferrals was extended to December 9, 2004 in another final rule (64 FR 69637, December 14, 1999). The third rule provided deferrals for secondary aluminum area sources, which also expired on December 9, 2004. Thus, today's final rule addresses all six categories of area sources subject to a post-1992 NESHAP that were subject to deferrals from permitting that expired on December 9, 2004.

The EPA published a notice of proposed rulemaking on March 25, 2005 (70 FR 15250), where we proposed to exempt from title V five categories of area sources subject to NESHAP: Dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. As support for the proposed exemptions, we discussed why compliance with title V appeared to be impracticable, infeasible, or unnecessarily burdensome on the area sources, consistent with the exemption criteria of section 502(a) of the Act. Also, we discussed a sixth category, area sources subject to the NESHAP for secondary lead smelters, but we did not propose to exempt them.

Today's final rule is unchanged from the proposal, except for a revision to § 63.360(f), which sets forth the title V exemption for area sources subject to the NESHAP for EO sterilizers. The change to the EO sterilizer rule is needed to clarify which sources under the NESHAP are subject to today's title V exemptions, and it is discussed further in section VIII.J of this preamble.

III. What Does Today's Action Involve?

A. What Revisions Are Being Made to Part 63?

Today's final rule exempts five categories of area sources from title V by revising certain language in the NESHAP rules under part 63, as we proposed on March 25, 2005 (70 FR 15250). This is achieved through two types of changes to the NESHAP rules.

First, we have revised each of the five NESHAP to say that area sources subject to the NESHAP are exempt from the obligation to obtain permits under parts 70 or 71, unless the source would be required to obtain these permits for another reason, as defined in the part 70 or 71 rules, such as when the source triggers another applicability provision of §§ 70.3(a) or 71.3(a). For example, if an exempt area source increases its HAP emissions such that it becomes a major source, the former area source will be required to get a title V permit because it is a major source, consistent with §§ 70.3(a)(1) and 71.3(a)(1). Consequently, when a former area source becomes a major source, the major source permit must include all NESHAP requirements that apply to the major source, including the requirements of the NESHAP that formerly provided for the title V exemption.[3] This is so because §§ 70.3(c)(1) and 71.3(c)(1) require permits for major source to include "all applicable requirements for all relevant emissions units in the major source." Also, we added a second sentence to each NESHAP to say "notwithstanding the previous sentence," the source "must continue to comply with the provisions of this subpart applicable to area sources." The purpose of this sentence is to explain that area sources that are exempted from title V are not exempted from any emission limitations, standards, or any other requirements of the NESHAP.

Second, we have revised the table in each NESHAP that shows how the general provisions of subpart A of part 63 apply to that particular NESHAP, except for the dry cleaning NESHAP, which has no such table. For sources other than dry cleaners, the "comment" column for the § 63.1(c)(2) entry in the tables simply states that area sources subject to the subpart are exempt from title V permitting obligations.

[3] Note that when an area source becomes a major source, depending on the specific requirements of the NESHAP, the emissions standards may change from generally achievable control technology (GACT), which may be established for area sources, to maximum achievable control technology (MACT), which is required for major sources, but also may be established for area sources. Also, see § 63.1(c)(5).

We have made one change to the rule language of the proposal. In the final rule, we have revised the regulatory language of § 63.360(f), which sets forth the title V exemption for EO sterilizers. For more discussion of the proposed regulatory language and why we are changing it in the final rule, see section VIII.J below.

Also, we are not making any changes to the NESHAP for secondary lead smelters, consistent with our proposal, because we are not establishing a title V exemption for area sources subject to it. See section V below for a more detailed explanation of our decision regarding lead smelters.

B. What Revisions Are Being Made to Parts 70 and 71?

Today's final rule also revises parts 70 and 71, as we proposed, to make the rules more consistent with our interpretation that State and local agencies, tribes, and EPA (permitting authorities) may not issue title V permits to area sources after we promulgate title V exemptions for them. In the proposal, we explained that section 502(a) of the Act provides that only those area sources required to get permits, and not exempted by EPA through notice and comment rulemaking, are properly subject to title V requirements. Also, we explained that section 506(a) of the Act, which provides that permitting authorities "may establish additional permitting requirements not inconsistent with this Act," does not override the more specific language of section 502(a). We also explained that section 506(a) preserves the ability for permitting authorities to establish additional permitting requirements, such as procedural requirements, for sources properly covered by the program, and that section 116 of the Act allows State and other non-federal permitting agencies (State agencies) to issue non-title V permits to area sources that have been exempted from title V. See section VI below for further discussion of our interpretations of the Act in this regard.

First, we proposed to delete the "at least" language of § 70.3(a) that has been interpreted to allow State agencies to require permits from area sources, once we have exempted the area sources from title V, because this language is inconsistent with section 502(a) of the Act. No similar changes are necessary for part 71. Second, we proposed to delete language in § 70.3(b)(3) and § 71.3(b)(3) that allows exempt sources to "opt to apply for a permit under a part 70 program," as it is inconsistent with section 502(a) to let exempted area sources volunteer for a title V permit.

Third, we proposed to delete the prefatory phrase of § 70.3(b)(4), "Unless otherwise required by the state to obtain a part 70 permit," because it suggests that States agencies may require title V permits for exempted area sources, such as for residential wood heaters and asbestos demolition and renovation, which would be inconsistent with section 502(a) of the Act. Today's rule makes these revisions final, unchanged from the proposal.

IV. What Are the Reasons for the Title V Exemptions?

A. General Approach

In the proposal of March 25, 2005 (70 FR 15250), we explained our general approach to implementing the exemption criteria of section 502(a) of the Act. Section 502(a) of the Act provides, in part, that the Administrator may "promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements." In addition, EPA explained that the legislative history of Section 502(a) suggests that EPA should not grant exemptions where doing so would adversely affect public health, welfare, or the environment. See Chafee-Baucus Statement of Senate Managers, Environment and Natural Resources Policy Division 1990 CAA Leg. Hist. 905, Compiled November, 1993 (in that "[t]he Act requires EPA to protect the public health, welfare and the environment, * * * this provision of the permits title prevents EPA from exempting sources or source categories from the requirements of the permit program if such exemptions would adversely affect public health, welfare, or the environment").

In developing this rulemaking, EPA sought and relied on information from State and local agencies on the level of oversight they perform on these area sources. They responded with information on whether they issue permits, perform routine inspections, provide compliance assistance, and on compliance rates for them. We also received input from State small business ombudsmen and several trade associations representing dry cleaning, metal finishing, solvent cleaning, and the aluminum industry, including information on the sources and the compliance assistance programs currently available for them. In addition, the proposal provided a 60-day public comment period and public citizens, non-profit organizations, State agency representatives, and affected industry representatives responded with comments, which are included in the docket.

In the proposal, we discussed on a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be "unnecessarily burdensome" on the category, consistent with section 502(a) of the Act. See 70 FR 15253, March 25, 2005.

One commenter said we should have evaluated and discussed all four factors for each category of area sources, suggesting that we ignored factors that did not support title V exemptions for each category of area sources. In response, we have considered, and discuss in this preamble, all four factors for each category of area sources for today's final rule. See the explanation below for an overview of our analysis of each factor. Also, see section IV.B through F for detailed discussion of the four factors for each category of area sources, section VIII.A for detailed EPA response to this comment, and section VIII.D, which provides detailed EPA response to this comment, and other comments, on proposed factor four.

The first factor discussed in the proposal is whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are already required by the NESHAP. This preamble refers to this evaluation as probing whether title V is "unnecessary" to improve compliance for these NESHAP requirements at area sources. Thus, a finding that title V does not result in significant improvements to compliance, as compared to operating subject to the NESHAP without a title V permit, is described as supporting a conclusion that title V permitting is "unnecessary" for area sources in that category, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act. Title V provides authority to add monitoring requirements in permits in appropriate circumstances, and also imposes a number of monitoring, recordkeeping and reporting requirements that are designed to enhance compliance. We analyze below the extent to which Title V could improve compliance for the area sources covered by today's rule.

Part 70 and 71 set forth, in three principal sections, monitoring requirements that may be included in title V permits for area sources. Section 70.6(a)(3)(i)(A) requires that title V permits include "[a]ll monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements." This means, for example, that monitoring required by a NESHAP must be included in a title V permit issued to a source covered by a NESHAP. Second, § 70.6(a)(3)(i)(B) goes further, and provides that "[w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" may be included in a title V permit. Importantly, however, where periodic monitoring exists in the underlying requirement, such as a NESHAP, permit writers are not authorized by this regulation to add additional periodic monitoring in a permit. See *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015, 1028 (D.C. Cir. 2000). Finally, § 70.6(c)(1), provides that permits must contain "consistent with [the periodic monitoring rule in § 70.6(a)(3)], compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit."[4]

The EPA's interpretation of § 70.6(c)(1) has evolved over time. In November and December 2000, EPA partially granted two petitions for objections to State-issued part 70 permits. See In the Matter of Pacificorp, Petition No. VIII–00–1 (November 16, 2000); In the Matter of Fort James Camas Mill, Petition No. X–19999–1 (December 22, 2000). In both decisions, EPA held that § 70.6(c)(1) empowers State permitting authorities to review, on a case-by-case basis, the sufficiency of each permittee's monitoring requirements, independent of the authority provided by the periodic monitoring rule. On September 17, 2002, EPA published a proposed rule that would have codified this interpretation of § 70.6(c)(1). See 67 FR 58561. After considering comments, however, EPA issued a final rule (the "umbrella monitoring rule") providing that § 70.6(c)(1) does not allow permit writers to add monitoring requirements beyond those that are authorized by the periodic monitoring rule. See 69 FR

[4] Similar provisions appear in EPA regulations in Part 71 stipulating monitoring provisions for federally-issued title V permits.

3202, 3204 (January 22, 2004). This rule was the subject of litigation in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit), and the Court recently vacated and remanded the rule on the basis that EPA failed to provide adequate notice in its proposal of the option that it adopted in its final rule. See *Environmental Integrity Project* v. *EPA*, 205 U.S. App. LEXIS 21930 (D.C. Cir. 2005).

In EPA's March 25, 2005 proposal to exempt five categories of area sources from title V requirements, EPA explained that "under the umbrella monitoring rule and the periodic monitoring rule, title V permits would not typically add any new monitoring requirements for post-1992 NESHAP, including the NESHAP addressed in today's proposal." See 70 FR 15254. The recent decision in *Environmental Integrity Project* vacating the umbrella monitoring rule does not change our view that subjecting these area sources to title V will not likely lead to monitoring beyond that required by the underlying NESHAP. All of the NESHAP were issued after the 1990 amendments to the Act, and were therefore designed to meet all of the Act's current monitoring requirements. Interested parties that believed those regulations failed to provide for sufficient monitoring had an opportunity to comment on the proposed NESHAP and to challenge EPA's rulemaking decisions in court. Any such opportunity has now passed. Thus, even if § 70.6(c)(1) is interpreted to allow "sufficiency" monitoring independent of the authority that exists through the periodic monitoring rule, EPA is confident that no such additional monitoring would appropriately be added in title V permits issued to the five categories of area sources we exempt from title V today.[5] Therefore, the monitoring component of the first factor favors title V exemptions for all of the categories of sources for which exemptions are provided in this rule, because title V is "unnecessary" to provide adequate monitoring for them. Also, see EPA response to comment that title V permits are needed to define monitoring for electroplaters, in section VIII.G.

[5] It has been EPA's consistent position that post-1990 NESHAP include all monitoring required under the Act. See, *e.g.*, the preamble to EPA's compliance assurance monitoring rule, 64 FR 54940 (October 22, 1997) and EPA's advance notice of proposed rulemaking soliciting comments on Clean Air Act requirements that may include inadequate monitoring requirements, 70 FR 7905 (February 16, 2005) (specifically not soliciting comment on standards promulgated after 1990 because they contain adequate monitoring under the Act).

As part of the first factor, we have also considered the extent to which title V could potentially enhance compliance for area sources covered by today's rule through recordkeeping or reporting requirements, including requirements for a six-month monitoring report, deviation reports, and an annual compliance certification. See §§ 70.6(a)(3) and 71.6(a)(3), §§ 70.6(c)(1) and 71.6(c)(1), and §§ 70.6(c)(5) and 71.6(c)(5). In the proposal, we stated that the recordkeeping and reporting requirements of the NESHAP for electroplaters, EO sterilizers, and secondary aluminum smelters are substantially equivalent to those of title V. After considering comments received on the proposal, we continue to believe the compliance requirements for these NESHAP are substantially equivalent to those of title V. Also, see EPA response to comments on issues related to factor one, including section VIII.I, concerning comment that the compliance requirements for EO sterilizers and secondary aluminum are not substantially equivalent to those of title V.

In the proposal, we did not discuss recordkeeping and reporting in the context of factor one for dry cleaners or degreasers, but we do so in today's final rule in response to comment. As mentioned above, these NESHAP have monitoring requirements consistent with the title V monitoring requirements. However, they do not contain reporting requirements that are identical to the title V requirements for deviation reports, six-month monitoring reports, and annual compliance certification. [See §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii).]

The NESHAP for dry cleaners requires a log to be keep on-site to document the dates that weekly leak detection and repair activities are conducted, the results of weekly monitoring of temperature and perchloroethylene concentrations, and a rolling monthly calculation of annual perchlorethylene consumption. It does not require a 6-month monitoring report, "prompt" deviation reports, or annual compliance certification, directly comparable to the compliance requirements of § 70.6(a)(3)(iii)(A) and (B), and § 70.6(c)(5).

The NESHAP for degreasers requires exceedances of monitoring parameters to be reported at least semiannually and it requires an annual compliance report, which for most sources, is composed of a statement that operators have been trained on operation of cleaning machines and their control devices and an estimate of solvent consumption on an annual basis, but it does not require a 6-month monitoring report, "prompt" deviation reports, or annual compliance certification, directly comparable to the requirements of § 70.6(a)(3)(iii)(A) and (B), and § 70.6(c)(5).

Although the reporting requirements of these two NESHAP are not directly comparable to those of title V, this does not mean that the reporting requirements of these two NESHAP are inadequate to achieve compliance on their own. Indeed, in issuing the NESHAP for these sources, EPA determined that the recordkeeping and reporting requirements contained therein were adequate, and EPA continues to believe that this is the case. The EPA acknowledges these additional title V reporting measures may provide some marginal compliance benefits. However, EPA believes that they would not be significant. Because the monitoring required by the two NESHAP is consistent with the monitoring requirements of title V, and because each NESHAP has adequate recordkeeping and reporting requirements tailored to the NESHAP, we conclude that the first factor supports a title V exemption for these sources. [See additional explanation for dry cleaners and degreasers in sections IV.B and D below.]

The second factor considered in determining whether title V is "unnecessarily burdensome" for these categories is whether title V permitting would impose significant burdens on these area sources and whether these burdens would be aggravated by difficulty they may have in obtaining assistance from permitting agencies. We used this factor to assess whether title V satisfies the "burdensome" component of the "unnecessarily burdensome" criterion of section 502(a) of the Act. We discussed this factor in the proposal as supporting our exemption findings for dry cleaners, chrome electroplaters, solvent degreasers, and secondary aluminum smelters, but we did not specifically discuss it with respect to EO sterilizers. However, in the proposal, we stated a belief that title V burdens and costs would be significant for all five categories of area sources, and this statement included EO sterilizers. See discussion of the second factor in the proposal, 70 FR 15254.

To help us assess factor two, we collected information on the burdens and costs of title V and economic data for the area sources, and we placed this information in the docket prior to our proposal. See economic information for the five industry groups (docket item 04), and information on burdens and costs of title V in the information

collection requests (ICRs) for part 70 and 71 (docket items 80 and 81). Note that the economic information is for the broad industry group, which includes both area sources and major sources under title V. However, despite this, certain assumptions about their economic characteristics are possible because almost all of them are small businesses with limited resources. For example, many dry cleaners are small "mom-and-pop" retail establishments, which will have greater difficulty in meeting regulatory demands than large corporations with trained environmental staffs and greater resources. The ICRs for part 70 and 71 describe title V burdens and costs in the aggregate, they are not designed for use in estimating title V burdens and costs for any particular sources. The ICRs do not include specific estimates of burdens and costs for area sources because area sources were subject to title V deferrals at the time the ICRs were approved. However, the ICRs describe in detail various activities undertaken at title V sources, including activities for major sources with standard permits, and certain activities for major sources with general permits, and area sources may be issued either standard or general permits, so many of the same burdens and costs described in the ICRs will also apply to these area sources. See general permit rules, §§ 70.6(d) and 71.6(d). In the proposal, we included a list of source activities associated with part 70 and 71 that impose title V burdens and costs, whether the source has a standard or general permit, and we described how permits for area sources may have a somewhat reduced scope, based on §§ 70.3(c)(2) and 71.3(c)(2), compared to major source permits. Despite the potential for reduction of burdens for area sources, we proposed finding that the burdens and costs of title V would be significant for these area sources, similar to those for major sources. Thus, we proposed finding that V is "burdensome" for these area sources, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

Our review of comments and further consideration of these issues has not led us to a different view for all categories of area sources. For EO sterilizers, as in the proposal, EPA has no reliable information on the economic resources of area sources but, as described below, believes that a number of area sources are small businesses with limited economic resources. See section IV.E. Given the lack of specific economic information for EO sterilizers, EPA is not making a specific finding as to whether factor two supports an exemption for this source category. Thus, we find today that factor two supports title V exemptions for all categories of area sources, except for EO sterilizers, where other factors support the exemption. See 70 FR 15258–15259 for more on the burdens of general permitting for area sources. Also, see sections VII and VIII.K below for more on our alternative proposal to require general permits for area sources in lieu of exempting them, section VIII.C below for more on title V cost estimates for area sources, and section VIII.L below for more on title V costs estimates for sources with general permits.

EPA's general belief, stated in the proposal, that title V burdens and costs would be significant for EO sterilizers was not based on any particular study or docket support, but instead on a general assessment of the types of smaller establishments likely to meet the "area source" definition of part 63 and conduct EO sterilization activities, e.g., small contract sterilization businesses, conducting off-site sterilization services for manufacturers of medical equipment and supplies, pharmaceuticals, spices, and cosmetics. See docket items 88 and 106.

In response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions, we note that the docket does not contain reliable information on the economic resources of area sources in this category, but EPA reaffirms the general belief that there are area sources in the EO sterilizer category that would be small businesses or other small establishments with limited economic resources. Nevertheless, because specific information on the economic resources of EO sterilizers is lacking, EPA is basing its decision to exempt this category from title V on its assessment of the other three factors and additional rationale noted in its evaluation of the legislative history of title V. [See section IV.D.] Also, see section VIII.A for more detailed EPA response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We discussed factor three in the proposal as supporting our exemption findings for dry cleaners, but we did not discuss it with respect to the other four categories of area sources we proposed for title V exemption. See more discussion on factor three in the proposal, including a detailed listing of many of the mandatory activities imposed by title V for area sources, 70 FR 15254. As described above in the context of our discussion of factor two, we find that costs of title V are significant for all categories except for EO sterilizer, where sufficient economic data are lacking for such a finding. Nevertheless, the types of enterprises within the EO sterilizer category are strongly suggestive that title V would be an economic burden for some, if not all, of the area sources. Also, through factor one and/or revised factor four for each category of area sources in the proposal, both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, we established that title V is "unnecessary" for NESHAP compliance. Although there may be some compliance benefits from title V for some area sources, we believe they will be small, and not justified by title V costs and burdens for them.

Accordingly, for all categories of area sources we exempt today, we conclude that title V costs are not justified considering the potential for gains in compliance from title V, and thus, factor three supports title V exemptions for all five categories of area sources, consistent with section 502(a) of the Act. See economic data for all industry groups, docket item 04, and information on title V burdens and costs, docket items 80 and 81. See section VIII.A for more detailed EPA response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions.

The fourth factor considered in the proposal is whether oversight, outreach, and compliance assistance programs by the EPA, or a delegate State or local agency, primarily responsible for implementing and enforcing the NESHAP, could achieve high compliance with particular NESHAP, without relying on title V permitting. We used this factor to help examine whether title V is "unnecessary" for NESHAP compliance for these area sources. See the discussion of factor four in the proposal, 70 FR 15254, March 25, 2005. We discussed this factor as supporting our exemption findings of the proposal for dry cleaners, solvent degreasers and EO sterilizers, but we did not discuss it for electroplaters and secondary aluminum.

To help us assess this factor we collected information from State and local air pollution control agencies (State agencies), summarized in the "State survey" which we placed in the docket for this rulemaking (docket item

02). The State survey shows that many State agencies have compliance oversight programs that result in high compliance for the dry cleaners, solvent degreasers and EO sterilizers, and that high compliance for them does not necessarily depend on title V. This point was repeated by State and local agencies who submitted comments on the proposal, all of which are in support of the proposed exemptions for the five categories of area sources, see docket items, 11, 16, 59, 61, and 65.

One commenter opined that factor four is inconsistent with Congressional intent concerning the "unnecessarily burdensome" criterion of section 502(a) of the Act, because it examines the future possibility that a State might adopt alternatives to title V that are sufficient to achieve compliance with the NESHAP, without title V, rather than examining whether actual programs are in place to achieve compliance with the NESHAP, without title V permits. In response, we have revised factor four in the final rule, and we have analyzed all five categories of area sources based on the revised factor. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the NESHAP for all five categories of area sources addressed in today's final rule, in all parts of the nation, without title V permits. These programs take several forms, including programs of implementation and enforcement conducted by EPA under the statutory authority of sections 112, 113, and 114, and State delegation of this responsibility under section 112(l) of the Act, implemented through subpart E of part 63. Second, section 507 of the Act requires a small business assistance program (SBAP) for each State and for EPA, and these programs are in place, and they may be used to assist area sources subject to NESHAP that have been exempted from title V permitting. Third, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. The statutory requirements for implementation and enforcement of NESHAP in section 112 apply to NESHAP that regulate all sources, including area sources. Thus factor four is satisfied for each of these categories of area sources by the statutory requirements alone. However, additional voluntary programs conducted by State and local agencies supplement the mandated programs and enhance the success of the programs.

We used the compliance rate information in the State survey as a check on our assumption that the statutory programs for implementation and enforcement of NESHAP, together with other efforts by State agencies would result in adequate compliance for these sources, without relying on title V permits. The State survey lists various State oversight programs, without indicating whether they are conducted voluntarily or under statutory authority. Also, the compliance rate information in the survey suggests that adequate compliance is being achieved in practice for all of these categories of area sources (with more than half of the agencies that responded reported high compliance for each category). [See the State survey, docket item 02.]

However, for secondary aluminum, fewer State and local agencies responded with examples of compliance oversight programs and information on compliance rates, compared to other categories. We believe these data are explained by the timing of the State survey relative to the effective date of the secondary aluminum standard, rather than suggesting any deficiencies in State implementation and enforcement for the NESHAP. The earliest date that compliance with the secondary aluminum NESHAP was required for sources was about the same time as the data collection phase of the State survey, and thus, State and local agencies did not have much experience with compliance oversight for them, or much compliance data upon which to base their survey responses for secondary aluminum. The secondary aluminum NESHAP did not require sources to be in compliance until March 24, 2003 (all other NESHAP were effective much earlier than this), while the majority of State and local input for the State survey occurred from March to June of 2003. [See the final rule for secondary aluminum, 65 FR 15690, March 23, 2000, docket item 77, and documentation of the data collection phase of the State survey, docket items 93 and 94.] We believe that State agencies are implementing this NESHAP in the same manner as others and, based on that belief, the statutory program, and the information in the State survey, we conclude that factor four supports title V exemptions for area sources subject to the secondary aluminum NESHAP.

The analysis of factor four we performed for the final rule continues to support title V exemptions for dry cleaners, degreasers, and EO sterilizers, as we proposed, and it additionally supports exemptions for electroplaters and secondary aluminum smelters. Thus, for the final rule, factor four helps to demonstrate that title V is "unnecessary" for NESHAP compliance, consistent with the "unnecessarily burdensome" criterion of section 502(a) for all area sources we exempt today. Also, see section VIII.A for more detailed EPA response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions, and section VIII.D for additional EPA responses to comments on proposed factor four.

In the proposal, we stated our belief that exempting these five categories of area sources from title V permitting would not adversely affect public health, welfare, or the environment, consistent with the legislative history of section 502(a). The reasons EPA explained in the proposal were the factors supporting exemptions discussed above and two other reasons: (1) That placing all requirements for these sources in permits would do little to help improve their compliance with the NESHAP, because of the simplicity of the sources and the NESHAP, and the fact that these sources are not typically subject to more than one NESHAP, and few other requirements under the Act, and (2) because requiring permits for them could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. For the final rule, we continue to believe that title V exemptions for these five categories of area sources will not adversely affect public health, welfare, or the environment for the same reasons discussed in the proposal. See the proposal, 70 FR 15254–15255, and EPA response to comments on this issue in section VIII.E below.

In conclusion, the four factors and other rationale of the final rule are appropriate to analyze whether title V permitting is "unnecessarily burdensome" for these five categories of area sources, and we finalize title V exemptions for them based on our analyses of these four factors and other rationale. The clarification of the factors we did not discuss in the proposal, including the revision of factor four, contained in today's final rule, does not change our view, as stated in the

proposal, that title V is "unnecessarily burdensome" for the five categories of area sources we exempt today. Thus, for these reasons we are exempting from title V area sources subject to the part 63 NESHAP for dry cleaners, halogenated solvent degreasers, chrome electroplaters, EO sterilizers and secondary aluminum smelters. See sections IV.B through F, below for more detail on our analysis of the four factors for each category of area sources we exempt today.

B. Dry Cleaners

In the proposal, we described how factors two, three, and four support title V exemptions for area sources subject to the NESHAP for perchlorethylene dry cleaners, subpart M. We did not discuss factor one for dry cleaners, other than to note that title V would not result in additional monitoring for these sources, but we do so today below in response to comment. See the general discussion of monitoring and the specific discussion of dry cleaners in the proposal, 70 FR 15254–15256, March 25, 2005.

First, in the proposal, we explained that title V burdens and costs are significant for dry cleaners (factor two), and thus title V will be "burdensome" for them. Dry cleaners are typically small "mom and pop" retail establishments employing only five people on average, with extremely limited technical and economic resources, and low profit margins, and title V costs would represent an excessively high percentage of sales for them. See the economic profile for dry cleaners, docket item 04. In addition, concerning factor two, the burdens of title V for dry cleaners would not likely be mitigated by assistance from permitting authorities because the authorities would likely not be able to meet the high demand caused by title V permitting for up to 28,000 dry cleaners nationally. Thus, we believe title V costs are significant for dry cleaners, and that title V is "burdensome" for them, because most are small businesses with limited resources, that would be subject to numerous mandatory source activities under part 70 or 71 that would represent significant costs to them in light of their resources, whether they have standard or general permits.

Second, as described in the proposal, factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, supports a conclusion that title V will be "unnecessary" for NESHAP compliance, and thus, that title V exemptions are appropriate for dry cleaners. However, in response to comments, we have revised factor four (explained below), and revised factor four continues to support the conclusion that title V is "unnecessary" for compliance with the NESHAP for dry cleaners. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the dry cleaning NESHAP, without title V, in all parts of the nation. Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for dry cleaners Also, many State and local agencies reported to us that compliance with the dry cleaning NESHAP can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, including such tools as calendars designed to schedule NESHAP compliance activities, and inspection checklists for the NESHAP, rather than by using title V permits. See State and local input on compliance assistance programs for area sources, including dry cleaners (docket items 02, 03, 06, and 08); an example of a compliance calendar for dry cleaners (docket item 90), and an inspection checklist for dry cleaners (docket item 95); and State and local agency comments in support of the proposed exemptions (docket items 11, 16, 59, 61, and 65). The EPA agrees with those commenters who stated that non-title V compliance approaches are more likely to be successful for implementing the dry cleaning NESHAP. Also, see section VIII.D below for more on our decision to revise factor four.

Third, in the proposal, we explained that the costs of title V for dry cleaners are not justified taking into consideration the potential gains in compliance likely to occur from title V (the third factor). Consistent with the explanation above of factor two for dry cleaners, title V costs will be significant for them. Also, consistent with revised factor four for dry cleaners, title V is "unnecessary" for NESHAP compliance for them, so it follows that the potential for gains in compliance is low. Thus, for dry cleaners, title V costs are high and the potential for compliance gains from title V are low. Although there may be some compliance benefits from title V for dry cleaners (discussed below), we believe they will be small, and not justified by title V costs and burdens for them. Accordingly, for dry cleaners, we conclude that title V costs are not justified taking into consideration the potential for gains in compliance from title V.

In addition, as we explained in the proposal, the large number of dry cleaners that are area sources (up to 28,000 nationally) makes it likely that permitting them would strain the resources of State agencies, potentially reducing overall air program effectiveness, and thus, potentially adversely affecting public health, welfare, or the environment.

With respect to factor one for dry cleaners, we explained in the proposal that title V would not result in additional monitoring for these sources, and we have reaffirmed this conclusion today. See section IV.A. We did not discuss the recordkeeping and reporting component of factor one in the proposal, but we do so here in response to comment. As discussed in section IV.A, the dry cleaning NESHAP does not contain reporting requirements that are directly comparable to the title V requirements for deviation reports, six-month monitoring reports, and annual compliance certification. [See §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii).] However, this does not mean that the reporting requirements of the NESHAP are inadequate to achieve compliance on their own. Indeed, in issuing the NESHAP for these sources, EPA determined that the recordkeeping and reporting requirements contained therein were adequate, and EPA continues to believe that this is the case. [See 58 FR 49354, September 22, 1993.] We acknowledge that the additional reporting requirements that would be provided through title V may have some marginal compliance benefits, however, we believe they would not be significant. Because the monitoring required by the NESHAP is consistent with the monitoring requirements of title V, and because the NESHAP itself has adequate recordkeeping and reporting requirements tailored to the NESHAP, we conclude that factor one supports an exemption for dry cleaners. Also for dry cleaners, factor four (described above) independently supports that title V is "unnecessary" for NESHAP compliance. Consequently, our view of the appropriateness of a title V exemption for dry cleaners is unaffected by our expanded analysis of

factor one for them, and we exempt them in today's final rule.

Thus, factors one, two, three, and revised factor four, support the exemption findings of the proposal, and EPA concludes that title V exemptions are appropriate for area sources subject to the NESHAP for dry cleaners, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

C. Chrome Electroplaters

In the proposal we described how factors one and two support title V exemptions for area sources subject to the NESHAP for hard and decorative chrome electroplating and chromic acid anodizing (electroplaters), subpart N. We did not discuss factors three and four for electroplaters in the proposal, but we do so below in response to comment. See the discussion of electroplaters in the proposal, 70 FR 15256, March 25, 2005.

First, in the proposal, we stated that title V would impose significant burdens (including costs) for electroplaters (the second factor), and thus, title V will be "burdensome" for them. We based this view on our review of economic information (docket item 04), and information on title V burdens and costs (docket items 80 and 81). After viewing the comments received, and upon further consideration we continue to believe that title V burdens and costs are significant for electroplaters that are area sources because most are small businesses with limited resources, that would be subject to numerous mandatory activities under parts 70 or 71, that would impose significant costs in lights of their resources, whether they had a general or standard permit. Also, see discussion of the second factor in section IV.A above.

Second, in the proposal, we explained that the compliance requirements of title V and the NESHAP for electroplaters are substantially equivalent, so title V will not result in any new significant compliance requirements over those already required by the NESHAP (the first factor), and thus, title V will be "unnecessary" for NESHAP compliance. We reaffirm this finding today with respect to monitoring, in section IV.A. See section VIII.B for response to a comment that the interpretation of title V's monitoring requirements in the proposal was flawed, and section VIII.G below for EPA response to a comment that title V permits are needed to define monitoring requirements for electroplaters. With respect to recordkeeping and reporting, the electroplating NESHAP requires area sources to submit on-going compliance status reports, including a description of the NESHAP emission limitations or work practice standards, the operating parameters monitored to show compliance, information about the results of monitoring, including about excess emissions and exceedances of monitoring parameters, and a certification by a responsible official that work practices are followed. This report is required on an annual or six-month basis, depending on the frequency of periods of excess emissions. These reports result in information that is substantially equivalent with respect to assuring compliance as that required in six-month monitoring reports, deviation reports, and annual compliance certification reports under title V.

In the proposal, we did not discuss factor three, whether title V costs are justified, for electroplaters, taking into consideration any potential gains in compliance likely to occur through title V, but our analysis of factor three for the final rule is that it supports title V exemptions for them. Consistent with the explanation above of factor two, title V costs are significant for electroplaters. Also, for electroplaters, consistent with factors one (discussed above) and revised factor four (discussed below), both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, title V is "unnecessary" for NESHAP compliance, so it follows that the potential for gains in compliance from title V will be low. Thus, for electroplaters, title V costs are high and the potential for gains in compliance from title V is low. Although there may be some compliance benefits from title V for electroplaters, we believe they will be small, and not justified by title V costs and burdens for them. Accordingly, for electroplaters, we conclude that title V costs are not justified considering the potential for gains in compliance from title V.

Also, in the proposal, we did not discuss factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, for electroplaters. In response to comments, we have revised factor four, and revised factor four supports the title V exemption findings of the proposal for electroplaters. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the electroplating NESHAP, in all part of the nation, without title V. Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the electroplating NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for electroplaters. Also, many State and local agencies reported to us that compliance with the NESHAP for area sources, including for the electroplating NESHAP, can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. See State and local input on compliance assistance programs for area sources (docket items 02, 03, 06 and 08); and State and local agency comments on the proposal, all of which are in support of the proposed title V exemptions for the five categories of area sources (docket Items, 11, 16, 59, 61, and 65). Also, see section VIII.D below for EPA response to comments on factor four.

Thus, factors one, two, three, and revised factor four, support the exemption findings of the proposal, and consequently, title V exemptions are appropriate for area sources subject to the NESHAP for electroplating, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

D. Solvent Degreasers

In the proposal, we discussed how factors two and four support title V exemptions for area sources subject to the NESHAP for halogenated solvent degreasing, subpart T. With respect to factor one, we explained that title V would not result in additional monitoring for these sources, and we have reaffirmed this conclusion today. See Section IV.A. We did not discuss the recordkeeping and reporting component of factor one or factor three for degreasers, but we do so below in response to comment. See the discussion of degreasers in the proposal, 70 FR 15256–15257, March 25, 2005.

First, in the proposal, we explained that requiring title V permits would impose a significant burden on degreasers that they will have difficulty meeting with current resources (factor two), and thus, title V will be "burdensome" for them. Area source degreasers are typically small operations

employing only a few people, with limited technical and economic resources, and little experience in environmental regulations. Also, unlike the larger major sources, area source degreasing operations typically have no staff trained in environmental requirements and are generally unable to afford to hire outside professionals to assist them with understanding and meeting the permitting requirements. See the economic profile for degreasers, docket item 04. We received comment supporting this view (see docket item 31), and now we conclude that degreasers are small businesses with limited resources, subject to numerous mandatory activities under parts 70 or 71, that will be burdensome for them to meet, whether they have a general or standard permit; and that this means title V is "burdensome" for them. Also, see discussion of the second factor in section IV.A above.

Second, in the proposal, we explained that factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, supports title V exemptions for degreasers. In response to comments, we have revised factor four and revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the solvent degreasing NESHAP for area sources, without relying on title V permits. The EPA concludes that there are implementation and enforcement programs in place sufficient to assure compliance with the degreasing NESHAP, in all parts of the nation, without title V (further described in section VIII.D below). Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the degreasing NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for degreasers. In addition, many State and local agencies reported to us that compliance with the degreaser NESHAP can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. [For example, see docket item 92, an inspection checklist for degreasers developed by a local air pollution control agency.] Thus, for the final rule, revised factor four supports that title V is "unnecessary" for NESHAP compliance for degreasers. See State and local agency input on compliance assistance programs (docket items 02. 03, 06, and 08), and State and local agency comments submitted in support of the proposed exemptions (docket items 11, 16, 59, 61, and 65). Also, see section VIII.D below for more on our decision to revise factor four; and section VIII.H below for EPA's response to comment on the appropriateness of title V exemptions when multiple applicable requirements apply to degreasers.

We did not thoroughly discuss factor one for degreasers in the proposal, but we do so here in response to comment. For the reasons explained in section IV.A, the degreasing NESHAP contains monitoring requirements for area sources that satisfy the requirements of the Act, and are sufficient to assure compliance with the NESHAP. However, as discussed in section IV.A, the degreasing NESHAP does not contain reporting requirements that are directly comparable to the title V requirements for deviation reports, six-month monitoring reports, and annual compliance certification. [See §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii).] However, this does not mean that compliance requirements of the NESHAP are inadequate to achieve compliance on their own. Indeed, in issuing the NESHAP for these sources, EPA determined that the recordkeeping and reporting requirements contained therein were adequate, and EPA continues to believe that this is the case. [See 59 FR 61801, December 2, 1994.] The EPA acknowledges these additional title V reporting measures may provide some marginal compliance benefits, however we believe they would not be significant. Because the monitoring required by the NESHAP is consistent with the monitoring requirements of title V, and because the NESHAP itself has adequate recordkeeping and reporting requirements tailored to the NESHAP, we conclude that the first factor supports a title V exemption for degreasers. Also, factor four (described above) independently supports the conclusion that title V is "unnecessary" for NESHAP compliance for degreasers, and thus, that a title V exemption is appropriate for them.

Also, in the proposal, we did not discuss factor three, whether title V costs are justified, taking into consideration any potential gains in compliance likely to occur for degreasers, but our analysis of factor three for the final rule is that it supports title V exemptions for them. Consistent with our analysis of factor two for degreasers (discussed above), title V costs are significant for them. Also, for degreasers, revised factor four (discussed above), which examines the ability of title V permits to improve compliance over that required by the NESHAP, supports that title V is "unnecessary" for NESHAP compliance, so it follows that the potential for gains in compliance from title V are low. Although there may be some compliance benefits from title V for degreasers, we believe they will be small, and not justified by title V burdens and costs for them. Accordingly, for degreasers, title V costs are not justified taking into consideration the potential for gains in compliance from title V, and thus, factor three also supports title V exemptions for degreasers.

Thus, factors one, two, three, and four support the exemption findings of the proposal, and EPA concludes that title V exemption is appropriate for area sources subject to the NESHAP for solvent degreasing, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

E. EO Sterilizers

In the proposal, we described how factors one and four support a title V exemption for area sources subject to the NESHAP for EO sterilizers, subpart O. We did not discuss factors two and three for EO sterilizers, but we do so below in response to comments. See the discussion of EO sterilizers in the proposal, 70 FR 15256, March 25, 2005.

First, in the proposal, we compared the monitoring and reporting requirements of the EO sterilizer NESHAP with those of title V, and we stated that the requirements are substantially equivalent (the first factor), when sources employ continuous monitoring methods to assure proper operation and maintenance of control equipment, such as thermal oxidizers. Also, we said that sources that use scrubbers employ noncontinuous monitoring methods (e.g., weekly readings of glycol levels in tanks), and thus, the recordkeeping and reporting requirements for them would not be substantially equivalent to title V. Although we were not certain of the number of area sources that employ continuous monitoring methods under the NESHAP, we stated a belief that most sources would employ such methods, and we asked for comment on the percentage of sources that employ them. In addition, we noted that the EO sterilizer NESHAP does not require an annual compliance certification (as does title V), and we asked for comment on

the extent to which the lack of an annual compliance certification report requirement in the NESHAP would negatively affect compliance with the NESHAP.

For the final rule, we reviewed the EO sterilizer NESHAP once again, and we now conclude that sources with scrubbers are required to conduct "continuous" monitoring under the NESHAP, and therefore, that the recordkeeping and reporting requirements of title V and the NESHAP are substantially similar for all sources in the category. The EO sterilizer NESHAP at § 63.363(f) requires all sources to demonstrate continuous compliance, and it sets forth the monitoring requirements for demonstrating continuous compliance when the source employs scrubbers as emissions controls at § 63.364(b). [See Table 1 of § 63.360, for a list of the general provisions, subpart A of part 63, including definitions and reporting requirements, that apply for this NESHAP.] Because they conduct "continuous" monitoring, they are required to submit excess emissions and continuous monitoring system performance report and summary reports, to assess their compliance status on a semiannual basis, consistent with § 63.10(e)(3), the same as sources that use thermal oxidizers as emissions controls under the NESHAP. These reports provides compliance information that is substantially equivalent to that of §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii) for deviation reports and six-month monitoring reports (see explanation below).

The EO sterilizer NESHAP requires sources to submit considerable information to EPA, or its delegate agency, to assess compliance with its emission limitations and standards. Section 63.366(a)(3) requires an excess emissions and continuous monitoring system performance report and summary report of all sources with a continuous monitoring system (CMS), on a semiannual basis, consistent with § 63.366(e)(3). The excess emissions and continuous monitoring system performance report requires information on periods when the CMS is inoperative, periods of excess emissions and parameter monitoring exceedances, the nature and cause of each malfunction, any corrective actions taken, including repairs or adjustment made, and a certification of accuracy by a responsible official. The summary report, consistent with § 63.10(e)(3), is required to include an emissions data summary for control system parameters and a CMS performance summary, which provides detailed information on periods of monitoring system downtime and the reasons the system was inoperative, including a certification of accuracy by a responsible official. [See § 63.10(c)(5) through (13); and Table 1 of § 63.360.]

As described above, the compliance information already required to be reported by the EO sterilizer NESHAP is substantial, and it is similar to that required for annual compliance certification under title V [see §§ 70.6(c)(5) and 71.6(c)(5)]. Also, the compliance reports required by the NESHAP require certification by a responsible official, which is defined similarly in the two programs (see § 63.2, and §§ 70.2 and 71.2). For these reasons, we conclude that the lack of an annual compliance certification report under title V will not have a significant impact on compliance for the EO sterilizer NESHAP. In addition, as described in section IV.A, title V would not add any monitoring requirements for these sources.

Accordingly, we conclude that the EO sterilizer NESHAP provides compliance information that is substantially equivalent to the information required under title V. Thus, our analysis of factor one for the final rule is that it supports that title V is "unnecessary" for NESHAP compliance for EO sterilizers. Also, see section VIII.I below for EPA response to comments on EPA's analysis of the compliance requirements of the EO sterilizer NESHAP.

Second, in the proposal, we explained that factor four, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, supports title V exemptions for EO sterilizers. In response to comment, we have revised factor four (explained below), and revised factor four continues to support that title V is "unnecessary" for compliance with the NESHAP for EO sterilizers, and thus, it supports title V exemptions for them. In the final rule, revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the EO sterilizer NESHAP, in all parts of the nation, without relying on title V permits. Also, the State survey (docket item 02) shows that most States and local agencies report that they conduct State permitting programs, programs of routine inspection, and provide different types of compliance assistance tools to help assure compliance with the EO sterilizer NESHAP, often in combination, and that more than half of the agencies that reported compliance rate information reported high compliance for EO sterilizers. Also, many State and local agencies reported that compliance with the EO sterilizer NESHAP can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. See State and local input on compliance assistance programs (docket items 02, 03, 06, and 08); and comments submitted by State and local agencies, all of which are in support of the proposed exemptions for the five categories of area sources (docket items 11,16, 59, 61, and 65). Also, see section VIII.D below for more on our decision to revise factor four, and section VIII.H and VIII.J below for EPA responses to comments on the proposed exemption for EO sterilizers.

In the proposal, concerning factor two, whether title V is a significant burden for these area sources, we stated a general belief that title V burdens and costs would be significant for all five categories of area source, and this statement included EO sterilizers. For EO sterilizers, this general belief was not based on any particular study or docket support, but instead on a general assessment of the types of smaller establishments likely to meet the "area source" definition of part 63 and conduct EO sterilization activities, *e.g.*, libraries and museums conducting fumigation of books and artifacts for conservation purposes, and small contract sterilization businesses, conducting off-site sterilization services for manufacturers of medical equipment and supplies, pharmaceuticals, spices, and cosmetics. See docket items 88 and 106.

In response to the comment that we should consider all four factors in evaluating each category of area sources for exemptions, we note that the docket does not contain reliable information on the economic resources of area sources in the EO sterilizer category, but EPA reaffirms the general belief that these types of sources are likely to include relatively small businesses or other establishments with limited economic resources. EPA is basing its decision to exempt EO sterilizer area sources from title V on a consideration of the limited information in the record on the types of establishments subject to the area source rule, and on its assessment of the other three factors and additional rationale noted in its evaluation of the legislative history of title V. [See section

IV.D.] EPA believes title V would be "unnecessarily burdensome" for EO sterilizer area sources, because title V would impose burdens that EPA believes would significantly outweigh the small compliance benefits expected from title V permitting for this category, satisfying the exemption criterion in section 502(a).

Also, in the proposal, we did not discuss factor three, whether title V costs are justified, taking into consideration any potential gains in compliance likely to occur, for EO sterilizers, but we clarify in today's final rule that factor three supports title V exemptions for them. We described above in the context of factor one and revised factor four, both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, why we believe that title V is "unnecessary" for NESHAP compliance for them, so it follows that the potential for gains in compliance is low. Although there may be some compliance benefits from title V for EO sterilizers, we believe they will be small, and not justified by title V costs and burdens for them. Although we do not have reliable data on the economic resources of EO sterilizers, the costs of title V will be the same for these sources as other area sources addressed in this rule. In light of the low compliance benefits provided by title V for these sources, we do not believe that those costs are justified. Accordingly, for EO sterilizers, we conclude that title V costs are not justified taking into consideration the potential for gains in compliance from title V, and thus, factor three supports title V exemptions for them.

Thus, factors one, three, and four support the title V exemption findings of the proposal for area sources subject to the EO sterilizers NESHAP. There is insufficient information to conclude that factor two supports an exemption for EO sterilizers, but title V will impose some burdens regardless of the financial resources of EO sterilizers, and any burdens associated with title V compliance will be unnecessary, since title V will not provide any significant compliance benefits for them. Therefore, a title V exemption is appropriate for them, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

F. Secondary Aluminum

In the proposal, we described how factors one and two support title V exemptions for area sources subject to the NESHAP for secondary aluminum, subpart RRR. We did not discuss factors three and four for them, but we do so below in response to comment. See the discussion of secondary aluminum in the proposal, 70 FR 15258, March 25, 2005.

First, in the proposal, we compared the recordkeeping and reporting requirements of the secondary aluminum NESHAP with those of title V, and we stated that the requirements are substantially equivalent (the first factor), when sources employ continuous monitoring methods to assure proper operation and maintenance of control equipment, such as when sources use thermal oxidizers for emission controls. Also, we said that sources that use scrubbers as emissions control do not employ continuous methods, and thus, the compliance requirements for them are not substantially equivalent to title V. Although we were not certain of the number of area sources that employ continuous monitoring methods under the NESHAP, we stated a belief that most sources would employ such methods, and we asked for comment on the percentage of sources that employ them. In addition, we noted that the secondary aluminum NESHAP does not require an annual compliance certification (as does title V), and we asked for comment on the extent that the lack of an annual compliance certification report requirement in the NESHAP would negatively affect compliance with the NESHAP.

For the final rule, we reviewed the secondary aluminum NESHAP once again and we now conclude that sources with scrubbers are required to conduct "continuous" monitoring under the NESHAP. The secondary aluminum NESHAP requires CMS for each add-on control device, including for scrubbers, when they are approved as an alternative monitoring method [*e.g.*, § 63.1510(w)]. [See Appendix A of subpart RRR, for a list of the general provisions of subpart A of part 63, including definitions and reporting requirements, that apply for this NESHAP; and the preamble for the final secondary aluminum NESHAP, 65 FR 15693, March 23, 2000, for more on the requirement for continuous compliance under the NESHAP.] Because they conduct "continuous" monitoring, they are required to submit excess emissions/summary reports to assess their compliance status, on a semiannual basis, consistent with § 63.10(e)(3), the same as other sources that use add-on controls, such as thermal oxidizers, under the NESHAP. These reports provide compliance information that is substantially equivalent to the requirements of §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii) for deviation reports and six-month monitoring reports (see detailed explanation below).

The secondary aluminum NESHAP requires sources to submit considerable information to EPA, or its delegate agency, to assess compliance with its emission limitations and standards. Section 63.1516(b) of the NESHAP requires an excess emissions/summary report for all sources with a CMS, on a semiannual basis, consistent with §§ 63.10(e)(3) and 63.10(c). The excess emissions report requires all monitoring data, information on periods when the CMS is inoperative, periods of excess emissions and parameter monitoring exceedances, the nature and cause of each malfunctions, any corrective actions taken, including repairs or adjustment made, certifications by a responsible official that certain work practices were performed, and the results of any performance tests conducted during the reporting period. The summary report, consistent with § 63.10(e)(3), is required to include an emissions data summary for control system parameters and a CMS performance summary, which provides detailed information on periods of monitoring system downtime and the reasons the system was inoperative, including a certification of accuracy by a responsible official. [See §§ 63.1516(b)(2) and (3); and § 63.1518].

As described above, the compliance information already required to be reported by the secondary aluminum NESHAP is substantial, and similar to that required for annual compliance certification under title V [see §§ 70.6(c)(5) and 71.6(c)(5)]. Also, the compliance reports required by the NESHAP require certification by a responsible official, which is defined similarly in the two programs (see § 63.2; and §§ 70.2 and 71.2). Because of the substantial information concerning compliance required to be reported by the secondary aluminum NESHAP, the lack of an annual compliance certification report under title V will not have a significant impact on compliance for the NESHAP, and we are satisfied that the recordkeeping and reporting component of factor one supports an exemption for area sources subject to this NESHAP. [Also, see docket item 89, a summary in tabular form of the monitoring, recordkeeping, reporting, and other compliance requirements of the secondary aluminum NESHAP.] As discussed in Section IV.A, the monitoring component of factor one also supports a title V exemption for secondary aluminum smelters.

Accordingly, we conclude that the secondary aluminum NESHAP provides compliance information that is

substantially equivalent to the information required under title V. Thus, our analysis of factor one for the final rule is that it supports that title V is "unnecessary" for NESHAP compliance for secondary aluminum. [Also, see section VIII.I below for EPA's response to significant comments on the proposed exemption for secondary aluminum smelters.]

Second, in the proposal, we discussed that title V permitting would impose a significant burden on these area sources that would be difficult for them to meet with current resources (the second factor). In 2001, there were over 1,300 facilities in the secondary aluminum industry. Half of these facilities employed fewer than 20 employees. These small sources will likely lack the technical resources needed to comprehend and comply with permitting requirements and the financial resources needed to hire the necessary staff or outside consultants. Accordingly, we conclude that title V is "burdensome" for them because almost all of them are small businesses with limited resources, and they will be subject to numerous mandatory sources activities under part 70 and 71, that it will be burdensome for them to meet, whether they have a standard or general permit. Thus, for the final rule, we believe factor two supports title V exemptions for secondary aluminum smelters.

We did not discuss factor three in the proposal, whether title V costs are justified, taking into consideration any potential gains in compliance likely to occur, for area sources subject to the NESHAP for secondary aluminum, but we clarify in today's final rule that factor three supports title V exemptions for them. We explained above that title V imposes significant burdens and costs on these area sources (factor two). Also, for secondary aluminum area sources, consistent with factor one (described above) and revised factor four (discussed below), both of which examine the ability of title V permits to improve compliance over that required by the NESHAP, title V is "unnecessary" for NESHAP compliance, so it follows that the potential for gains in compliance for them is low. Although there may be some compliance benefits from title V for secondary aluminum area sources, we believe they are small, and not justified by title V costs and burdens for them. Accordingly, for secondary aluminum, title V costs are not justified for area sources taking into consideration the potential for gains in compliance from title V, and thus, factor three supports title V exemptions for them.

In the proposal, we did not discuss factor four for secondary aluminum smelters, whether adequate oversight by State agencies could achieve high compliance with NESHAP, without relying on title V permits, for secondary aluminum. In response to comments, we have revised factor four, and revised factor four supports the conclusion that title V is "unnecessary" for compliance with the NESHAP for secondary aluminum, and thus, it supports a finding that title V exemptions are appropriate for them. Revised factor four is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for area sources, without relying on title V permits. As further described in section VIII.D below, there are implementation and enforcement programs in place sufficient to assure compliance with the secondary aluminum NESHAP, in all parts of the nation, without relying on title V. These programs take several forms, including programs conducted under the statutory authority of sections 112, 113, and 114 of the Act, State delegations under section 112(l), SBAP under section 507, and voluntary compliance assistance, outreach, and education programs. Factor four is satisfied for this category by the statutory requirement for implementation and enforcement of NESHAP in section 112, which applies to all NESHAP, including this one. For secondary aluminum, the State survey confirms that adequate compliance is being achieved in practice by States (more than half of the agencies that reported compliance rate information reported high compliance), but there were fewer examples of compliance oversight programs and fewer responses to the compliance rate question for this category, compared to other categories. We believe these data are explained by the timing of the State survey relative to the effective date of the secondary aluminum standard, rather than suggesting any deficiencies in State implementation and enforcement for the NESHAP. The timing of the State survey explains the response to questions concerning secondary aluminum because the earliest date that compliance with the secondary aluminum NESHAP was required was about the same time as the data collection phase of the State survey. Thus, State and local agencies did not have much experience with compliance oversight for secondary aluminum, or much compliance data upon which to base their survey responses for this category at the time the State survey was conducted. The secondary aluminum NESHAP did not require sources to be in compliance until March 24, 2003 (all other NESHAP were effective much earlier than this), while the majority of State and local input for the State survey occurred from March to June of 2003. [See the final rule for secondary aluminum, 65 FR 15690, March 23, 2000, docket item 77, and documentation of the data collection phase of the State survey, docket items 93 and 94.] Also, many State and local agencies reported to us that compliance with the NESHAP for area sources, including for the secondary aluminum NESHAP, can best be achieved through compliance assistance efforts, such as compliance outreach and education programs, and compliance tools, rather than by using title V permits. See State and local input on compliance assistance programs for area sources (docket items 02, 03, 06 and 08); and State and local agency comments on the proposal, all of which are in support of the proposed title V exemptions for the five categories of area sources (docket Items, 11, 16, 59, 61, and 65). For these reasons, we conclude in the final rule that factor four supports title V exemptions for area sources subject to the secondary aluminum NESHAP. [Also, see section VIII.D for EPA response to comments on proposed factor four.]

Thus, factors one, two, three, and four support the title V exemption findings, and, consequently, title V exemptions are appropriate for area sources subject to the NESHAP for secondary aluminum, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

V. What Is EPA's Decision for Secondary Lead Smelters?

In the proposal, we declined to make a finding that title V permitting for area sources subject to the NESHAP for secondary lead smelting would be impracticable, infeasible, or unnecessarily burdensome, and we asked for comment to help us determine if we should make such a finding. We considered the same factors for these area sources as we did for other categories of area sources, but we did not have a basis for finding that an exemption was warranted, as for the other area sources addressed in this rulemaking. We did not receive any information or data during the comment period sufficient to support a finding that permitting these area sources would be "impracticable, infeasible, or unnecessarily burdensome" on such sources or that exemptions would "not adversely affect public health, welfare,

or the environment," nor did we receive any comments in opposition to our proposal not to exempt secondary lead area sources. For these reasons, the final rule will not exempt these area sources from title V requirements. See 70 FR 15259.

Any area source subject to the secondary lead NESHAP that has not already applied for a title V permit is required to submit a title V permit application by December 9, 2005, as provided in § 63.541(c) of subpart X. Also, as provided in § 70.3(c)(2) and § 71.3(c)(2), assuming the source is an area source and not subject to title V for another reason, the permit must include the requirements of subpart X and all other applicable requirements that apply to emissions units affected by subpart X, while any units not subject to subpart X may be excluded from the permit. (See 68 FR 57518, October 3, 2003, footnote #7 on page 57534.)

VI. May Title V Permits Be Issued to Exempt Area Sources?

In the proposal, we explained and sought comment on our proposed interpretation of the Act as allowing only those area sources required to be permitted under section 502(a), and not exempted by EPA through notice and comment rulemaking to be subject to title V requirements. We are finalizing that interpretation in today's final rule. Thus, after the effective date of today's final rule, permitting authorities, including State and local agencies, tribes, and EPA, may not issue title V permits, including general permits, to area sources we exempt in today's final rule. This interpretation of the Act means that permitting authorities must stop issuing new title V permits to area sources we exempt today, unless they are subject to title V for another reason. Also, this means that any existing title V permits for such exempted area sources must be revoked or terminated after the effective date of today's final rule. However, to avoid disruptions to State programs, States may wait until renewal to end the effectiveness of such permits, unless an area source requests that this be done expeditiously. The EPA believes that State issuance of title V permits to area sources that EPA has exempted from title V permitting requirements would conflict with Congress's intent that EPA define the universe of sources subject to title V, and through inappropriate focus on sources that qualify for an exemption, would be an obstacle to implementation of the title V program. Even if the statute were ambiguous in this regard, EPA would exercise its discretion to interpret it this way to promote effective title V implementation. The proposal included a discussion of these issues, and in the final rule, EPA's interpretation of the Act in this regard is unchanged from the proposal. See section VI below for more on EPA's interpretation of these Act provisions. Note, however, that EPA interprets Section 116 of the Act to allow permitting authorities to issue non-title V permits to area sources that we have exempted from title V permitting. Such permits may include preconstruction permits, FESOPS or other State operating permits, or other permits not issued pursuant to an approved part 70 program.

VII. May General Permits Be Issued as an Alternative to Title V Exemptions?

The EPA has decided not to adopt the alternative, discussed in the proposal, of allowing permitting authorities to issue general permits to these area sources. The proposal discussed general permitting as a streamlined process for issuing title V permits to a large number of similar sources, and it stated that these area sources may be good candidates for such permits. The proposal also analyzed the factors and other rationale we used for title V exemptions against the requirements for general permits, and we stated our belief that potential reductions in costs and burdens from requiring general permits would not be sufficient to alter our findings. [See this discussion in the proposal at FR 15258–15259.] With respect to the first factor, the proposal said that general and standard permits are subject to the same permit content requirements under §§ 70.6 and 71.6, so title V would affect units to which the NESHAP applies in the same manner for general permits, as for standard permits. For the second factor, the proposal stated that general permits would potentially simplify the permit application process, but general permits would require area sources to conduct many of the same mandatory activities as sources with standard permits, and thus, impose many of the same title V burdens and costs as standard permits. [See the list of source activities in the discussion of factor two in the proposal, 70 FR 15254.] For the third factor, the proposal observed that general permits may reduce the costs of applying for a permit, but the remaining costs to meet the permit requirements will continue to be a burden for these area sources. This is so because general permits reduce some burdens, but other significant burdens remain. And, we explained that EPA's outreach in recent years has shown that most State agencies generally do not believe that implementing NESHAP for area sources through permits will result in increased compliance, and that this would be true for general permits, as with standard ones. This point was also made in comments submitted by State and local agencies, all of which are in support of the proposed title V exemptions for the five categories of area sources, see docket items, 11, 16, 59, 61, and 65. For the fourth factor discussed in the proposal, we said the permit content requirements of §§ 70.6 and 71.6 are identical for general and standard permits, and the ability of State agencies to ensure NESHAP compliance outside of the title V programs will apply with equal force for general permits. Nevertheless, we offered general permitting as an alternative to title V exemptions in the proposal, and we sought comment on this alternative.

Some commenters expressed the view that general permitting should be required as an alternative to title V exemptions because they believe title V is critical for compliance with the NESHAP. Today's final rule does not require general permits for these area sources as an alternative to exempting them for several reasons. First, through factors one and revised factor four, which we use to examine the ability of title V permits to improve compliance over that required by the NESHAP, we established that title V is "unnecessary" for NESHAP compliance for these area sources, whether they have a general or standard permit. [See detailed analysis of the factors one and four in sections IV.A, VIII.A, and VIII.D.] Second, under section 504(d) of the Act, issuing general permits to sources subject to title V is an option for State and local agencies; an EPA decision not to exempt these sources does not provide a means of ensuring that they would then receive general permits. Also, because general permits are an option, State and local permitting authorities would not be required to issue them to area sources that request them. Because of this, the best course of action to avoid unnecessary burdens for these area sources, and to promote a focus by regulatory agencies on the type of oversight we believe will be most effective in achieving compliance, is to exempt them from title V in today's final rule. See section VII below for more on EPA's decision to not require general permits for these area sources.

VIII. What Are EPA's Responses to Significant Comments?

This section of today's preamble discusses the more significant comments received on our March 25, 2005 proposal that are not addressed elsewhere in today's preamble, and

EPA's responses to these comments. The EPA's response to all comments (significant comments and other comments) is included in a response to comment document which is in the docket for this rulemaking.

A. Is EPA's General Approach to Exemptions Consistent With the Act?

Many commenters disagreed with the proposed title V exemptions because they did not agree that the four factors and other rationale we used to justify the exemptions were consistent with the Act. In response, the four factors and other rationale referred to in the proposal, and again in this final rule, are not intended to replace the statutory criteria for a title V exemption, but instead assist EPA in evaluating whether the statutory criteria are satisfied. Section 502(a) of the Act gives EPA discretion to exempt from title V area sources subject to NESHAP, if permitting them would be "impractical, infeasible or unnecessarily burdensome" on the area sources, while the legislative history for this provision suggests the EPA should also consider whether an exemption would "adversely affect public health, welfare, or the environment." The EPA used the four factors to analyze whether title V would be "unnecessarily burdensome" on the area sources, consistent with section 502(a). (See the explanation of the four factors and other rationale of the proposal at 70 FR 15253–15255, March 25, 2005.)

Factor one was used to analyze whether title V is "unnecessary" for NESHAP compliance by examining whether title V would add substantial compliance requirements over those already required by the NESHAP. Factor two was used to analyze whether title V will impose significant burdens on area sources and whether these burdens will be aggravated by difficulties area sources will experience in obtaining assistance from State agencies. Factor three was used to analyze whether title V costs are justified considering potential gains in compliance from title V. If the costs of title V are high, burdens are also high because costs are burdens; and if potential compliance gains derived from title V are low, title V is more likely to be considered "unnecessary" for NESHAP compliance. Factor four was used in the proposal to analyze whether adequate oversight by State agencies could achieve high compliance with NESHAP without title V permits. If high compliance with NESHAP can be achieved without title V, title V will more likely be considered "unnecessary" for NESHAP compliance. We have revised factor four in response to comments received on the proposal. See more on revised factor four below.

In addition to the four factors, the EPA considered whether exempting these area source from the need for title V permits could cause adverse effects on public health, welfare, or the environment, at least on a temporary basis, or whether requiring title V permitting could have such adverse effects because of shifts in the resources of State agencies away from assuring compliance for major sources with existing permits to issuing new permits for these area sources. We do not believe that exemptions from title V permitting for these area sources will have adverse effects on public health, welfare or the environment. First, as we explained in section IV above, through our analysis of factors one and/or four for each of the five categories of area sources, we established that title V is "unnecessary" for compliance with the NESHAP, for each category of area source. Second, as we explained in the proposal, the vast majority of these area sources are typically subject to no more than one NESHAP, and few other requirements under the Act. Also, the area sources are simple sources with few emissions units and the NESHAP are relatively simple in how they apply to these area sources. Because of these characteristics, the likelihood that multiple NESHAP apply to the same area source is low, and thus the need for a title V permit to clarify multiple or overlapping NESHAP is also low. (See docket item 08 for State input on the likelihood that multiple requirements will apply and the relative simplicity of these sources.) Also, see EPA response to comments on whether title V permit are needed to define monitoring for electroplaters, section VIII.G, and EPA response to comment on whether degreasers should be exempted when there are multiple applicable requirement that apply to them, section VIII.H. In sum, EPA believes that the factors and additional rationale that it has considered in evaluating whether title V exemptions should be issued for the area sources covered by today's rule appropriately probe whether title V is "unnecessarily burdensome" for the area sources, and whether an exemption could cause adverse effects on public health, welfare or the environment.

Several commenters were concerned that title V exemptions for these area sources would result in the loss of certain title V benefits with respect to State implementation plan (SIP) requirements, and that this would result in adverse affects on public health, welfare, and the environment. We disagree with this comment because we do not believe title V exemptions for these area sources will have the effects suggested by the commenter to any significant extent for the reasons explained below.

First, the majority of area sources we exempt today (all of the dry cleaners and many solvent degreasers), emit HAP that are not a criteria pollutant subject to regulation under a SIP, so such adverse effects for SIP requirements could not occur for these sources. This is the case because § 51.100(s), which defines VOC for purposes of SIP, specifically excludes perchloroethylene (also known as tetrachloroethylene), methylene chloride (dichloromethane), and 1,1,1-trichloroethane (methyl chloroform) from the definition of VOC. Because the only HAP regulated by subpart M is perchloroethylene, all area source dry cleaners regulated under the NESHAP (estimated at up to 28,000 area sources) do not emit VOC. Also, many degreasers subject to subpart T use perchloroethylene, methylene chloride, or 1,1,1,-trichloroethane (including any combination of these), and if they emit no other HAP that are VOC, then they also would not be subject to SIP requirements for VOC. We estimate that there are up to 3,800 area source degreasers subject to the NESHAP, but we have no estimate of how many of these solely emit HAP that is not VOC. Also, EPA has focused on VOC in this discussion because we are unaware of any other criteria pollutant definitions that would be met by these three HAP.

Second, title V permits for area sources are limited in scope by §§ 70.3(c)(2) and 71.3(c)(2), which only require the emission units that cause the source to be subject to title V (in this case the units subject to NESHAP) to be included in the permit. Under these regulations, if SIP requirements apply to an emissions unit, and NESHAP does not, the unit is not required to be included in the area source permit. For example, for a dry cleaner, the permit would only address dry cleaning equipment, not other emissions units that may be collocated at the area source, such as comfort heating systems subject only to SIP requirements. This is quite different than for major sources because §§ 70.3(c)(1) and 71.3(c)(1) requires major source permits to include all emissions units at the source, even those that would not be subject to NESHAP. Thus, the extent that title V exemptions for area sources would result in loss of compliance benefits for SIP requirements is quite limited by the permit content requirements for area sources, as compared to major sources.

Third, in our experience the NESHAP are more stringent than typical SIP

requirements that would apply to these area sources. Because of this, if a SIP and NESHAP apply to the same unit, any deficiencies in the SIP requirements are likely to be corrected by the more stringent NESHAP requirements, without the need for title V permits. Also, these NESHAP compliance requirements are consistent with the Act, such that title V permits are not needed to improve the compliance requirements of NESHAP (this is described in more detail in section VIII.B below).

The commenter submitted no specific examples where emission units subject to NESHAP are also subject to SIP requirements, but two scenarios may be helpful in analyzing their claims, which we believe are without merit. Both examples involve the so-called "generic applicable requirements" that we believe would most commonly apply to these area sources. These are relatively simple requirements that apply identically to all emissions units at a facility. Also, both are examples where the HAP meets the definition of VOC under § 51.100(s) and potentially is subject to regulation under a SIP (although we are not sure all SIPs regulate such units). The first scenario is where a HAP, such as carbon tetrachloride, is regulated by the degreaser NESHAP, and it is also VOC regulated under the SIP by a pound per hour limit.[6] The second is where a HAP, such as dioxin/furan, is regulated by the secondary aluminum NESHAP,[7] and it is also PM regulated under the SIP by a process weight limit. In both cases, EPA believes the NESHAP will be far more stringent than the SIP requirements in terms of emission controls and compliance requirements. Because of this, the NESHAP requirements will ensure that the area source also meets the SIP requirements, and the compliance requirements of the NESHAP will be consistent with the compliance requirements of the Act, including title V. In addition, EPA has previously advised States that "generic" requirements of the SIP (described above), that are less stringent than other applicable requirements addressing the same units and pollutants may be omitted from title V permits, provided that the resulting "streamlined" terms and conditions achieve compliance with all the applicable requirements. [See discussion of treatment of "generic" requirements in White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 6, 1996, docket item 100; and discussion of factor one in section IV.A of this preamble.]

In addition, we explained in the proposal that requiring permitting of area sources will likely cause, at least in the first few years of implementation, permitting authorities to shift resources away from assuring compliance for major sources with existing permits, to issuing new permits for area sources. This has the potential, at least temporarily, to reduce the overall effectiveness of States' title V permit programs, which could potentially adversely affect public health, welfare, or the environment. See docket item 08, where State officials explain that permitting all the area sources proposed for exemption would triple the number of title V permits issued in the State, and that it would be difficult for them to obtain approval to obtain additional full-time employees. Although State title V programs are required to have authority to raise title V fees as necessary to cover the costs of the program, in most States the program must seek budget and fee increases through the State legislature as part of the State budget process, which can lead to significant delays in getting approval to increase fees or resources to meet new demands. Also, see EPA response to comments on the legislative history guidance that title V exemptions for area sources should not cause adverse effects on public health, welfare, or the environment, in section VIII.E below.

One commenter said we should have discussed all four factors for each category of area sources, suggesting that we ignored factors that did not support the proposed title V exemptions for each category of area sources. In response, we did not discuss all four factors for each category of area sources in the proposal because we thought those factors we identified as present supported a finding that title V was "unnecessarily burdensome," regardless of any determinations that could be made regarding factors not analyzed. Nevertheless, in response to this comment, and to provide a full discussion of all issues potentially relevant to this rulemaking, we discuss the four factors for each category of area sources elsewhere in the preamble for today's final rule.

B. Does the First Factor Acknowledge Key Title V Requirements?

One commenter thought the first factor, whether title V adds significant compliance requirements beyond those required by a NESHAP, was not appropriate for analyzing the exemption criterion of section 502(a) of the Act because it fails to acknowledge key title V requirements that would be lost under a title V exemption, directly at odds with sections 504(a) and 504(c) of Act.

In response, the proposal's discussion of factor one focused on the key compliance requirements of title V that are most likely to add significant compliance benefits for area sources subject to NESHAP. We explained that title V imposes a number of monitoring, recordkeeping, and reporting requirements for compliance. We focused our review on the requirements for monitoring, and the recordkeeping/reporting requirements for prompt reports of deviations from permit requirements (deviation reports) and for reports of required monitoring every six months (six-month monitoring reports) under §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii), and the requirement for an annual compliance certification by a responsible official under §§ 70.6(c)(5) and 71.6(c)(5). Nevertheless, to provide a more complete response to the comment in the final rule, we describe below several other compliance aspects of title V that we were silent on in the proposal, including the requirements of section 504(a) for the permit to include "a schedule of compliance," and "such other conditions as necessary to assure compliance with applicable requirements of the Act, including the requirements of the applicable implementation plan [*e.g.*, SIP]," and the requirement of section 504(c) for permits to contain "inspection" and "entry * * * requirements to assure compliance with the permit terms and conditions."

Concerning the requirement of section 504(a) for schedules of compliance, there is independent authority for establishing schedules of compliance to bring noncompliant sources back into compliance under the general enforcement authority of section 113 of the Act, which applies to these NESHAP. Also, the approval criteria for delegation requests for NESHAP requires the Attorney General's written finding to say that the delegate agency has enforcement authorities that meet the requirements of § 70.11, which requires them to have authority to obtain an order, pursue a suit in court, or seek injunctive relief for violations, and this may result in a schedule of compliance, where appropriate, equivalent to any that may be obtained through title V. Thus, a title V permit is not necessary to establish a schedule of compliance for any of the area sources

[6] Note that these are the same emissions under different definitions, so if you control one, you control the other.

[7] The secondary aluminum NESHAP only regulates dioxin/furan emissions for a limited set of emission units for area sources, while additional HAP are regulated at additional emission units for major sources. [See § 63.1500(c).]

we exempt today, in the event of noncompliance with these NESHAP.

Concerning the requirement of section 504(a) that permits contain "enforceable emission limitations and standards," the five NESHAP addressed in today's final rule establish such emission limitations and standards, and they are independently enforceable outside of title V permits. Also, title V does not contain authority for creating new emission limitations and standards under section 112 in title V permits, so no such emission limitations or standards would be lost through title V exemptions for these area sources.

Concerning the requirement of section 504(a) that permits include conditions to assure compliance with the requirements of the applicable implementation plan (the SIP, for example), we described in section VIII.A above why exempting these area sources from title V would not significantly affect compliance with SIP requirements that may also apply to such area sources. Also, we add that these SIP requirements are independently enforceable under the authority of section 110 of the Act, so their implementation and enforcement does not depend on title V.

Concerning the requirements of section 504(c) for permits to contain inspection and entry requirements, when EPA is responsible for implementation and enforcement of the NESHAP such requirements would be met under the authority granted EPA by section 114 of the Act. State and local agencies or tribes are required to have such authority as a condition of approval for any delegation request they make, consistent with section 112(l) of the Act. For example, agencies requesting delegation of NESHAP are required to submit, as part of their delegation request, a written finding by the State Attorney General (or General Counsel for local agencies and tribes) that they have legal authority "to request information from regulated sources regarding their compliance status," under § 63.91(d)(3)(i)(B), and "to inspect sources and any records required to determine a source's compliance status," under § 63.91(d)(3)(i)(C). In addition, as part of their delegation requests, agencies are required to submit a plan that "assures expeditious compliance by all sources," including a description of "inspection strategies."

Also related to the comment and response above, several commenters said our analysis of factor one in the proposal was inadequate because we relied on an illegal interpretation of the Act's monitoring requirements through our reliance on the "umbrella monitoring" rule of January 22, 2004. These commenters argue that §§ 70.6(c)(1) and 71.6(c)(1) impose an additional case-by-case monitoring review called "sufficiency monitoring," that is independent from the requirement for "periodic monitoring" under §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). Also, they believe that if EPA conducted such a review, the result would be a determination that the compliance requirements of title V and the NESHAP are not substantially equivalent.

We disagree with this comment. As described more fully in section IV.A, even if "sufficiency monitoring" were required, additional monitoring requirements would not be imposed in title V permits for the area sources addressed by today's rule, because the NESHAP for them were all promulgated after the 1990 Clean Air Act amendments, and therefore contain all monitoring necessary to meet current requirements under the Act. In finalizing each of the NESHAP under part 63, EPA solicited and responded to comments on the adequacy of the monitoring, reporting, and recordkeeping provisions required by the NESHAP. Any opportunity to challenge the compliance requirements imposed through the five NESHAP has passed, and this rulemaking does not create new grounds for such challenges.

C. Does This Rulemaking Adequately Address Title V Costs?

Several commenters thought the costs of title V permitting for these area sources described in the proposal, relevant to factors two and three, were inflated and not representative, and instead, that the true costs of title V permitting for them would be much lower and not significant for them. Also, these commenters stated that the costs for title V for area sources would be a fraction of the costs for major sources because area sources have fewer emissions units, their operations are less complex, and they are simpler to permit.

In the discussion of factor two in section IV.A above, we described the information we used for the proposal, including economic information on the five industry groups (docket item 04) and information on title V burdens and costs from the ICRs for part 70 and 71 (docket items 80 and 81), to evaluate the impact of title V on these categories of area sources, including limitations on this information, and the assumptions we made for them concerning title V burdens and costs. Also, in the proposal, we acknowledged that these sources would generally have fewer emissions units, that their operations are less complex, and they would be simpler to permit, and we took these facts into consideration in our analyses. During the public comment period, no one submitted any information related to the area source categories to substantiate their claims that title V burdens and costs would not be significant for these area sources. Our review of comments and further consideration of these issues has not led us to a contrary view from the proposal. Thus, we find that factor two supports title V exemptions for the categories of area sources addressed in today's final rule.

Also relevant to factor two and three in the proposal, one commenter said that the EPA ignored Clean Air Act provisions designed to limit title V costs for small sources, while another commenter said States agencies are expected to have resources to meet this workload and fees to offset costs. Section 502(b)(3)(A) of the Act requires title V sources to pay annual fees, while section 507(f) of the Act, concerning SBAP, provides that the permitting authority may reduce any fee required under this Act to take into account the financial resources of small business stationary sources. In response, title V fees vary greatly from State to State, but because area sources have small emissions by definition and most State agencies charge emissions-based fees (on a per ton basis), fees would not comprise a substantial portion of the overall costs and burdens for these area sources. As the EPA explained in the proposal, there are many other burdens and costs of title V, unrelated to fees, such that whether fees are reduced or not, significant burdens and cost of title V would remain for these area sources. Section 502(b)(3)(A) of the Act requires fees to be charged that are sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the title V program. However, there are practical limitations on the ability of State agencies, tribes, and EPA to increase fees and provide additional resources for title V implementation, especially in a relatively short period of time. In many States, fee increases must typically be approved by the State legislature within the State budget process, and this may lead to significant delays in implementing new fee schedules to meet new demands. This limitation could lead to significant, albeit temporary, impairment of the title V programs for major sources, given the large workload a requirement to permit

these area sources would impose on State agencies. For example, if all these area sources were required to be permitted, up to 38,000 title V permit applications would be due by December 9, 2005, and title V permits for these sources would have to be issued or denied within 18 months of receipt of the applications, as required by section 503(a) and 503(c) of the Act.

Also relevant to factor two, one commenter pointed out that difficulties in obtaining compliance assistance from State agencies will be temporary. In response, EPA notes that even though such difficulties may be temporary, they would come at a critical time for sources and permitting authorities. For example, immediately upon becoming subject to title V, an area source which does not typically have employees trained in such matters, would need to quickly become familiar with the critical and pressing step of completing and submitting a permit application, required under § 70.5 and § 71.5. Since such applications are provided by individual permitting agencies, access to the agency to obtain assistance and guidance on completing the forms will be essential for area sources in order for them to complete and submit them by the mandatory deadline, currently December 9, 2005, in most jurisdictions. See 64 FR 69637, December 14, 1999, (setting the deadline of December 9, 2004 for deferrals to end). In addition, before applications are distributed to area sources, certain agencies may need to translate forms and other information into foreign languages, which in the EPA's experience, is often needed for small businesses, such as dry cleaners, in large urban communities, but not typically necessary for major sources. [For example, see a fact sheet developed for dry cleaners in Vietnamese, docket item 96 and the equivalent form in English, docket item 97.]

Another commenter thinks the title V costs would not be significant for area sources because they would merely be passed on to consumers. In response, no economic data for these categories of area sources were submitted by the commenter or otherwise available to the EPA to support this point, and any such assertion is entirely speculative. Costs cannot necessarily be passed on to consumers in highly competitive industries, or where there are highly price-responsive consumers. EPA believes that these situations may exist for these sources, and that passing prices on to consumers may, therefore, not be feasible for them. The commenter provided no information on competition in these industries, or on price-responsiveness of their consumers to support his assertions.

D. What Is Our Analysis of Factor Four for the Final Rule?

Commenters opposed to the EPA's reliance on the fourth factor in the proposal, whether adequate oversight could achieve high compliance with the NESHAP without title V, cited perceived flaws in the State survey (docket item 02), including that it does not contain representative data, that it has missing data, and that this missing data means that existing compliance with the NESHAP is not high. The proposal explained that information in the docket, including the State survey, shows that many permitting authorities have alternative compliance oversight programs that result in high NESHAP compliance without title V. During the public comment period, the EPA received comments from State and local agencies confirming this point. [See docket items 11, 16, 59, 61, and 65]. The EPA undertook the survey to collect information we thought would be relevant in our consideration of possible title V exemptions, and we believe State and local agencies made reasonable efforts to complete it. There is no definition for "high" compliance in the Act or EPA regulations, nor did the EPA suggest one to State agencies. States are primarily responsible for enforcement of the vast majority of Act requirements, including NESHAP, through delegation of EPA responsibilities, approved State programs, the SIP process, and other mechanisms, and we give considerable weight to their judgement on questions concerning the compliance status of sources. Moreover, even without such input from States, the EPA would have reached the same conclusion regarding high compliance absent title V because NESHAP are based on section 112 of the Act, which imposes stringent compliance requirements, independent of title V, and because States and EPA have adequate authority and actual implementation and enforcement programs in place sufficient to assure compliance with NESHAP, independent of title V.

Also concerning factor four of the proposal, one commenter said they believe Congressional intent was that these exemptions would only apply when a reasonable alternative to title V permitting is actually in place and achieving results, specifically citing the 1990 legislative history that the EPA "is authorized to exempt sources from the new permit program if the exemption would be consistent with the Act's purposes. For example, the EPA may exempt certain small but numerous sources from the requirement to obtain a permit if a reasonable alternative is developed." S. Rep. No. 101–228, at 349 (1990). In response, the plain wording of the Senate Report is that it is an "example" of a justification for a title V exemption. Title V does not require EPA to develop such alternative programs as a prerequisite to granting exemptions. In any event, as described below, we believe there is existing authority in the Act and actual implementation and enforcement programs in place, as required under section 112, that are sufficient to assure compliance with these NESHAP, and thus, high compliance can be achieved with the NESHAP without title V in all jurisdictions where such sources may reside in the nation.

First. Statutory programs of implementation and enforcement of NESHAP are conducted by EPA under the authority of sections 112, 113, and 114 of the Act, while State and local agencies or tribes may be granted delegation of this responsibility under section 112(l) of the Act (implemented through subpart E of part 63). The EPA has primary responsibility for implementation and enforcement of all NESHAP under section 112 of the Act in all parts of the nation. Section 112(l) allows EPA to delegate to State or local agencies or tribes certain of its implementation and enforcement duties for NESHAP, based on a State request to do so, and satisfaction of certain criteria. There are several types of delegations, including "straight delegation," which is adoption of the NESHAP without change, or the delegate agency may establish a program or rules to operate in place of the NESHAP, provided the program or rules are "no less stringent" than the NESHAP, and the delegate agency has adequate authority and resources to implement and enforce the delegated NESHAP (under all delegation options). Section 63.91(d) defines criteria that State and local agencies or tribes are required to meet prior to approval of requests for any type of NESHAP delegation, including that the request contain: (1) Written findings from the Attorney General (or General Counsel for local agencies and tribes) that they have certain legal authorities concerning enforcement and compliance, (2) a copy of the State statutes, regulations, and requirements that grant authority for them to implement and enforce the NESHAP, (3) a demonstration that they have adequate resources to implement and enforce all aspects of their NESHAP program, except for authorities retained by EPA, and (4) a plan that assures expeditious

compliance by all sources subject to the program. Also, depending on the type of delegation requested, §§ 63.92 through 63.95, and § 63.97 specify additional approval criteria. [Also, see section 112(l)(5), and the final rule for subpart E, 58 FR 62262, November 26, 1993, amended by 65 FR 55810, September 14, 2000]. In addition, under section 112(l)(6) EPA has authority to withdraw its approval of a delegation, or approval of an equivalent program or rule, if the delegate agency is not adequately implementing or enforcing the NESHAP; and under section 112(l)(7) EPA may enforce any NESHAP, including those it has delegated. Thus, even if a State does not have adequate authority to implement and enforce any NESHAP in their jurisdiction, EPA does have such authority, consequently, there can be no gap in implementation and enforcement for NESHAP that apply to area sources in any jurisdiction. [For example, see EPA's final rule approving the request of Indiana for delegation of all NESHAP for all sources not covered by the State's part 70 program, 62 FR 36460, July 8, 1997, docket item 98.]

Second. The EPA has general authority for enforcement of NESHAP under section 113, including authority to (1) issue an order requiring compliance or assessing an administrative penalty; (2) bring a civil action seeking to enjoin violations or the assessment of penalties; or (3) bring a criminal action to punish knowing violations. Section 114 allows the EPA to determine if violations have occurred through inspection, auditing, monitoring, recordkeeping, reporting, and entry onto premises.

Third. All States have established non-title V permitting programs, which may include operating and preconstruction permitting programs for minor sources, under section 110(a)(2)(C) of the Act. However, the EPA notes that several States have reported that their non-title V permits do not currently include NESHAP, so such permits would not always be immediately available for this purpose. Although some State agencies have established permitting programs under State law that include NESHAP for area sources, some have not, either because they do not have explicit State authority, or they have State authority, but they have chosen to not implement such a program so far. See the State survey (docket item 02), where States noted that they issue non-title V permits for certain of these area sources.

Fourth. All States and EPA are required to establish a small business assistance program (SBAP) under section 507 of the Act. These programs are required to assist small business with technical and environmental compliance assistance, and they are not limited to title V sources. Any activities for non-title V sources conducted by a SBAP may be funded by non-title V fees at State option, and EPA matching grants under section 105 of the Act may also be used for this purpose.[8] State SBAP programs are required by section 507 to provide information on compliance methods, to have a small business ombudsman, to provide assistance in determining applicable requirements and permitting requirements under the Act, and to refer sources to compliance auditors, or at State option, provide auditors for small sources. [For example, see docket item 91, a fact sheet concerning an SBAP implemented by a local air pollution control district.]

Finally. States may have voluntary compliance assistance programs in place for NESHAP requirements, such as the environmental results programs (ERP) or other similar programs. The EPA has encouraged States to adopt voluntary programs in the past, and the ERP, in particular, has been successful in assisting small sources with compliance in fourteen States across nine business-dominated sectors, including dry cleaners in Massachusetts and Michigan. See 70 FR 15260. In addition to the State survey, which includes information concerning State permitting programs, inspection, and compliance assistance programs, several permitting agencies submitted comments to describe their alternative programs for non-title V sources in additional detail. [See State and local comments, docket items 11, 16, 59, 61, and 65.] Importantly, no comments were received from State agencies saying that they would not be able to ensure compliance for these area sources if we promulgate title V exemptions for them.

E. Are These Exemptions Consistent With the Legislative History of The Act?

Several commenters expressed concern that exemptions from title V would adversely affect public health, welfare, or the environment by weakening air quality standards, increasing HAP emissions, and by increasing morbidity in human populations, and that this would be inconsistent with the legislative history of section 502(a).

In response, section 112 of the Act, which authorizes NESHAP, is the primary vehicle under the Act for HAP reduction, not title V. See sections 112(b)(2), 112(c)(3), 112(d), 112(f), and 112(k) of the Act. For an overview of the EPA's national effort to regulate air toxics under section 112, see a July 19, 1999 notice (64 FR 38705), which includes a description of the EPA's integrated urban air toxics strategy, a strategy to address public health risks posed by air toxics from the large number of smaller area sources in urban areas. Today's rulemaking is not exempting any area sources from any section 112 requirements, such as those described in the July 19 notice, and section 112 gives the EPA, or its delegate agency, responsibility to implement and enforce section 112 standards, independent of title V. Thus, consistent with the legislative history and the EPA's analysis for each category of area sources addressed in this rulemaking, title V exemptions for these particular area sources will not thwart or in any way interfere with the implementation and enforcement of section 112 of the Act, and today's action should not adversely affect public health.

The EPA does not believe HAP increases will occur from title V exemptions for these area sources. The Act does not require emission reductions through title V permits. As we explained in the proposal (70 FR 15255), the EPA's outreach in recent years has shown that several State agencies believe, in their experience, implementing emissions standards for area sources through permits did not result in increased compliance with the emissions standards. EPA has evaluated the extent to which title V could improve compliance for these NESHAP, and EPA believes that successful implementation at such sources is better achieved through compliance assistance efforts, such as compliance outreach and education programs, rather than title V permits.

One commenter asserted that title V permitting will not divert resources from more significant sources because the Act requires State and local agencies to charge adequate fees to cover the costs of the title V program, including the costs of small business assistance programs under section 507 of the Act, and adequate personnel to administer the program, and because fees may be reduced for small sources. This commenter apparently was taking issue with EPA's statement in the proposal

[8] For more on the use of matching grants, see a August 4, 1993 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permit Programs under Title V," and a July 21, 1994 memorandum from Mary D Nichols, Assistant Administrator for Air and Radiation, U.S. EPA, "Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants."

that "requiring permitting of area sources will likely cause, at least in the first few years of implementation, permitting authorities to shift resources away from assuring compliance for major sources with existing permits to issuing new permits for area sources. This has the potential, at least temporarily, to reduce the overall effectiveness of the States' title V permit programs, which could potentially adversely affect public health, welfare, or the environment." In response, EPA notes that there are practical limitations on the ability of State agencies, tribes, and EPA to increase fees and provide additional resources for title V implementation, especially in a relatively short period of time. As we described in the proposal (70 FR 15255), in many States, fee increases must typically be approved by the State legislature within the State budget process, and this may lead to significant delays in implementing new fee schedules to meet new title V demands. This limitation could lead to significant, albeit temporary, impairment of the title V program for major sources, given the large workload a requirement to permit these area sources would impose on State agencies. For example, if all these area sources were required to be permitted, up to 38,000 title V permit applications would be due by December 9, 2005, and title V permits for these sources would have to be issued or denied within 18 months of receipt of the applications, as required by section 503(a) and 503(c) of the Act.

F. Is It Reasonable for EPA To Rely on the Information Cited in Support of the Proposal?

Several commenters complained about the information EPA collected to support the findings of the proposal, particularly the State survey, concluding that it was so flawed that the findings are arbitrary and capricious under the APA or otherwise inconsistent with administrative rulemaking requirements. We disagree. In developing the proposal, EPA sought and relied on information from State agencies on the level of oversight and compliance rates for the area sources addressed in today's proposal. The results are summarized for each category of area sources in the State survey (docket item 02). The EPA also sought input from State small business ombudsmen and several trade associations, and they responded with information on the area sources and compliance assistance programs currently available to them. This information is also in the docket. See docket items 03, 06, and 08.

We have collected information we believe is useful and appropriate under the statute to establish a rational basis for evaluating whether the area sources addressed in today's rule satisfy the exemption criteria of section 502(a) of the Act. We summarized our outreach efforts and we collected cost and economic data, which we placed in the docket prior to the proposal. We considered all information available to us for this rulemaking, including that submitted during the public comment period, in making our exemption findings. Also see section X below for additional discussion of how this rulemaking satisfies administrative rulemaking requirements.

As to comments that the State survey is not complete, we believe much of the missing information can be explained by two factors: (1) State agency participation was voluntary, and (2) some States have more or less of these area sources, so experience with them varies. We did not base our decisions on missing data but on the data we have and our judgement as air quality experts, and we did not assume any particular meaning for missing data. Commenters had an opportunity to submit what they consider to be more complete or accurate information on compliance rates and the oversight activities of State agencies for these area sources during the comment period, but they did not do so.

Also, concerning information on burdens and costs of title V, for the current ICR, we provided the public with our draft analysis of burdens and costs under title V, including for general permits, and we received no comments.

G. Are Permits Necessary To Define Monitoring for Chrome Electroplaters?

One commenter stated that the monitoring requirements of the chrome electroplating NESHAP vary based on the type of control technique employed and the range of acceptable values, or a minimum and maximum, for each monitoring parameter at each area source, and that it would be useful for the public, regulatory agencies, and the source for its specific obligations to be spelled out in a permit.

The chrome electroplating NESHAP has extensive requirements for monitoring, recordkeeping, and reporting, including for monitoring system performance tests, and a written report to document the results of the performance test, which will document the monitoring techniques employed and the parameter ranges that show compliance. The NESHAP requires the source to conduct the performance tests needed to define the monitoring parameters that assure compliance by the source with its emissions limitations or standards, and this report is submitted to EPA or a delegate agency with such responsibilities, as defined at § 63.347(f), so neither the source or the regulatory agency will be confused about the specific monitoring that applies to area sources, absent a title V permit. Also, there is independent authority for public disclosure of information related to compliance with NESHAP under section 114(c) of the Act, which does not rely on title V for implementation. Public disclosure authority under section 114(c) of the Act extends to all information collected under NESHAP, even information required to be kept on-site, rather than submitted directly, except for trade secrets which may not be released to the public. Thus, if a member of the public wants information on compliance with the NESHAP, he or she may get it from the agency responsible for implementation and enforcement of the NESHAP (either EPA, or the State or local agency, or tribe), whether there is a title V permit or not. In addition, State or local agencies, or tribes, are required to submit, as part of their delegation request, a written finding by the State Attorney General (or General Counsel for local agencies and tribes) that the State has legal authority "to request information from regulated sources regarding their compliance status," under § 63.91(d)(3)(i)(B), and legal authority "to inspect sources and any records required to determine a source's compliance status," under § 63.91(d)(3)(i)(C). Therefore, title V is not necessary for State and local authorities to obtain compliance information from regulated sources. While it is helpful for the public, regulatory agencies, and the source for the specific requirements to be defined in a permit, we do not believe it is necessary for adequate compliance to occur, and we believe we have shown in today's final rule that title V would be unnecessarily burdensome on these area sources.

H. May Degreasers Be Exempted When There Are Multiple Applicable Requirements?

One commenter supports an exemption for degreasers, but only when they are not subject to other applicable requirements. They think the compliance requirements of the NESHAP will be substantially equivalent to title V only when the source is subject to only this NESHAP and the source is not subject to other NESHAP. In response, the EPA does not agree with this comment for the

following reasons. First, there are cases where more than one NESHAP for which a title V exemption is being finalized applies to degreasers, for example, where a degreaser is located at a chrome electroplater. But the requirements of the chrome electroplating and degreasing NESHAP do not significantly overlap for the emission units at such facilities, so this would not present a significant problem of complexity that would justify the burdens associated with issuing title V permits for such sources. Second, such concerns are largely offset by the relative simplicity of the emission control requirements of the degreaser NESHAP, which involves primarily work practice standards. For example, lids are required to be kept on containers at all times when not in use. However, EPA notes that where a degreaser is otherwise subject to title V, it will not be exempt from permitting. Thus, because degreasers are often collocated with major sources, as an adjunct to the primary activity occurring at the major source, many degreasers will be included in the major source permit for the collocated major source. This is so because, as we have clarified elsewhere in this preamble, major source permits must include all applicable requirements, and these exemptions are only for title V requirements at area sources.

I. Are the Compliance Requirements of the EO Sterilizer and Secondary Aluminum NESHAP Substantially Equivalent to Title V?

One commenter opined that the compliance requirements of the EO sterilizer and secondary aluminum NESHAP are not substantially equivalent to the compliance requirements of title V with respect to our analysis of factor one for area sources subject to these NESHAP because the EPA has no data to show how many sources employ continuous monitoring methods, and even if continuous methods are used, the reporting is not equivalent to title V reporting. Also, the commenter pointed out that the EO sterilizer and secondary aluminum NESHAP do not require an annual compliance certification (as does title V), and that this is another reason why the compliance requirements of the NESHAP and title V are not substantially equivalent as EPA proposed. Also, responding to a specific request of the proposal for input on the value of annual compliance certifications and the threat of enforcement for false certification for area sources subject to these NESHAP, the commenter said that completing a compliance certification will be important in bringing about better compliance because the act of signing one is not taken lightly and will produce positive results, including greater compliance efforts, and the submittal of more compliance plans.

In the proposal, we compared the compliance requirements of the EO sterilizer and secondary aluminum NESHAP with those of title V, and we stated for both that the recordkeeping and reporting requirements are substantially equivalent (the first factor), when sources employ continuous monitoring methods to assure proper operation and maintenance of control equipment, such as when sources use thermal oxidizers for emission controls. Also, we said that sources that use scrubbers as emission controls under both of these NESHAP employ noncontinuous monitoring methods, and thus, the recordkeeping and reporting requirements for them would not be substantially equivalent to the compliance requirements of title V. Although we were not certain of the number of area sources that employ continuous monitoring methods under either of the two NESHAP, we stated a belief that most sources would employ such methods, and we asked for comment on the percentage of sources that employ them. See the March 25, 2005 proposal's discussion of EO sterilizers (70 FR 15256) and secondary aluminum (70 FR 15258).

For the final rule, we reviewed the EO sterilizer and secondary aluminum NESHAP once again, and we now conclude that sources with scrubbers are required to conduct "continuous" monitoring under the NESHAP. Also, both of these NESHAP require sources that conduct "continuous" monitoring to submit excess emissions and continuous monitoring system performance report and summary reports to assess their compliance status on a semiannual basis, consistent with § 63.10(e)(3). These NESHAP require these reports for sources that use scrubbers for emissions controls, the same as they require them for sources that use thermal oxidizers as emissions controls. Under the two NESHAP, these reports provides compliance information that is substantially equivalent to the requirements of §§ 70.6(a)(3)(iii) and 71.6(a)(3)(iii) for deviation reports and six-month monitoring reports (see explanation below). [Also, see discussion of factor one for these area sources in sections IV.A, IV.E and IV.F, and more on why title V monitoring and the monitoring in these NESHAP are equivalent in section VIII.E.]

The compliance information already required to be reported by these two NESHAP is substantial, and similar to that required in annual compliance certifications under title V [see §§ 70.6(c)(5) and 71.6(c)(5)]. Also, the compliance reports required by the two NESHAP require certification by a responsible official, which is defined similarly in the two programs [see § 63.2, and §§ 70.2 and 71.2]. For these reasons, we conclude that the lack of an annual compliance certification report under title V will not have a significant impact on compliance for these NESHAP.

Also, in response to the comment that the act of signing the compliance certifications is valuable because it produces positive compliance results and that these results will be lost if we exempt these area sources from title V, we disagree that the title V exemptions will have this effect for these NESHAP. We conclude this in today's final rule because the EO sterilizer and secondary aluminum NESHAP both require the excess emissions and continuous monitoring system performance report and summary reports (described above) to be certified by a responsible official, similar to how this is done for title V. [See the requirements for certification by responsible official of § 63.363(a)(3) for EO sterilizers and § 63.10(e)(3)(v) for secondary aluminum.]

In the final rule, we conclude that the overall differences in compliance requirements, after considering all monitoring, recordkeeping, and reporting requirements, including the lack of annual compliance certification, are not great enough to have a significant impact on compliance for the EO sterilizer and secondary aluminum NESHAP, and we conclude that the compliance requirements of the NESHAP and title V rules are substantially equivalent. Thus, our analysis of factor one for the final rule is that it supports a finding that title V is "unnecessary" for compliance for area sources subject to the EO sterilizer and secondary aluminum NESHAP, consistent with the "unnecessarily burdensome" criterion of section 502(a) of the Act.

J. Are the Proposed Revisions to EO Sterilizer NESHAP Appropriate?

Several commenters were concerned that the proposed revision to § 63.360(f) would redefine what an "area source" is under the EO sterilizer NESHAP, resulting in fewer area sources. Also, they stated that the proposed rule change is inconsistent with the definition of "major source" and "area source" in section 112 of the Act, and

that it contradicts the proposed wording of Table 1 of § 63.360, which exempts "area sources" regardless of EO usage. Another commenter recommended that the rule language be revised to be consistent with parallel rule language for other subparts, which refers to "area sources."

In the final rule, § 63.360(f) has been revised to specify that exemptions from title V are for "area sources," rather than "sources using less than 10 tons [of EO]," as we proposed. The intent of the proposal was to exempt area sources subject to the NESHAP from title V, not to change the applicability of the NESHAP. The EPA's March 2004 implementation guidance for this NESHAP (docket item 88) is clear that the definition of "area source" is the definition of § 63.2, which is based on actual emissions or potential to emit, and this definition should be used for title V purposes under the NESHAP.[9] Also, the guidance explains that usage of EO is the basis for applicability of the emission standards for various types of vents, under the NESHAP. Nevertheless, we are changing the rule language today to clarify that "area sources" subject to this standard are exempted from title V, and this change will not affect the NESHAP requirements that apply to any existing sources. With this change, § 63.360(f) is now also consistent with Table 1 of § 63.360, in the same subpart, and with the rule language of subparts M, N, T and RRR, that also refers to "area sources."

K. Are Title V Permits Allowed for Area Sources Exempted From Title V?

Several commenters disagreed with the EPA's proposed approach of not allowing permitting authorities to issue title V permits to area sources that EPA has exempted from title V. These commenters did not agree with EPA's proposed reading of section 502(a), 506(a), and 116 of the Act as requiring this result. Also, they did not agree that existing title V permits for such sources should be terminated, suspended, or revoked after exemptions from title V take effect.

Several commenters opined that EPA's proposed approach is inconsistent with section 502(a) of the Act. The proposal explains that section 502(a) of the Act grants the Administrator alone discretion to define the universe of area sources subject to title V. It follows that once the EPA exempts area sources through rulemaking, they may not be permitted under title V. No other provision of the Act is more specific on this matter than section 502(a). Similarly, an existing title V permit for an area source that has been exempted from title V must be revoked, terminated, or denied because the permit would conflict with our interpretation of section 502(a) of the Act. We also believe allowing title V permitting for area sources we have exempted would be an obstacle to the implementation of title V both because of the confusion and frustration such a situation would cause for the area sources, based on the common sense meaning of the term "exemption," and because State efforts at title V permitting would be better spent addressing major sources and non-exempt area sources.

Several commenters were concerned that EPA's interpretation of section 502(a) of the Act is illegal because it conflicts with section 506(a), which allows States to have "additional permitting requirements not inconsistent with this chapter." In light of the structure of section 502(a), EPA believes that section 506(a) is best read as allowing States to establish additional permitting requirements for sources that are already subject to title V permitting. Thus, under the EPA's interpretation, there is no conflict between the two sections because section 502(a) of the Act defines what sources must get a permit, while section 506(a) of the Act allows States flexibility in establishing permit requirements for sources properly subject to the program.

Several commenters stated that EPA's proposed reading of section 502(a) is illegal because it conflicts with section 116, which allows States to issue title V permits to exempted area sources. We explained in the proposal that section 116 of the Act allows State agencies to issue non-title V permits to area sources that have been exempted from, or are outside the scope of, the title V program. However, even if the Act were ambiguous in this regard, EPA would exercise its discretion in interpreting the Act to reach the same result. The EPA would do so to avoid confusion for area sources, as described above, and to achieve the policy benefits associated with having States direct their title V efforts to major sources and non-exempt area sources.

L. Does This Rulemaking Disregard Cost Estimates for General Permits?

Several commenters were concerned that we disregarded prior estimates of title V costs for general permits and they believe that these estimates show that title V costs would be sufficiently low that title V would not be "unnecessarily burdensome" for the area sources addressed in the proposal.

In the discussion of burdens and cost of title V permitting in the proposal (section II.A of the proposal), we stated that we did not have specific estimates for the burdens and costs associated with general permits for sources, but we described certain source activities associated with the part 70 and 71 rules that would apply to sources, whether they have a general or standard permit. Also, in section III of the proposal we said that general permits would reduce burdens to some extent for area sources but that the potential burden and cost reductions would not be sufficient to alter our findings that title V would be significant for area sources. To explain this last point in more detail in the proposal, we reviewed each of the four factors we used in our exemption analysis with respect to general permits, and we concluded that title V will be "unnecessarily burdensome" for area sources that are issued general permits, rather than standard permits. (See 70 FR 15254 and 15258–15259.)

One commenter pointed to a regulatory impact analysis (RIA) for operating permits issued in 1992, saying we should have used the estimate of $154 per year in that document in analyzing the costs associated with general permits. In response, the RIA (Regulatory Impact Analyses and Regulatory Flexibility Act Screening for Operating Permits Regulations, U.S. EPA, Office of Air Quality Planning and Standards, EPA–450/2–91–011, June 1992) did contain an estimate of $154 for the total annual costs for general permits, but it is inaccurate and outdated because it was not based on actual implementation experience, such as the cost estimates contained in the more recent 2004 ICR, which is based on actual implementation experience, and which suggests significantly higher costs for general permits, on the order of half the cost of standard permits (see more on the 2004 ICR below). The part 70 rule was not effective until July 21, 1992, and consequently, no State title V programs were approved until December of 1994, and no part 70 permits were issued in any jurisdiction until late 1996. [Also, the part 71 rule was not effective until July 31, 1996].

One commenter said we disregarded information in the current ICR for part 70 (issued in 2004), including "re-application of general permits" at 2 burden hours for each title V source with a general permit, compared to the estimate of "permit renewal" at 200 burden hours for each title V source with a standard permit, which they believe shows that title V costs for area

[9] U.S. EPA, Office of Air Quality Planning and Standards, EPA–456/R–97–004, September 1997 (Updated March 2004), Ethylene Oxide Commercial Sterilization and Fumigation Operations NESHAP Implementation Document.

sources with general permits would not be significant (thus, not "burdensome" for them). In response, it was an oversight for us to refer in the proposal to cost estimates in the 2000 ICR for part 70, when an updated one, the 2004 ICR, was available; however, the 2004 ICR does not support the commenter's claim that title V costs would not be significant for these area sources. We referenced the 2000 ICR in our proposal as indicating an average title V cost of $7,700 per source per year, and noted that there were no specific estimates for general permits. Similarly, the 2004 ICR indicates an average title V cost of $7,300 per source per year, and, although it contains specific estimates of title V costs for certain activities required for sources with general permits, it does not provide specific estimates of title V costs for all activities that would occur for such sources. For example, the 2004 ICR lists twelve different activities that title V sources would experience (see table 2, average source burden by activity, page 16). The ICR lists all activities that may apply to a typical source, not all that will necessarily apply to every source. For example, there are burden hour estimates for three different types of permit revisions, but not all sources may need any of these permit revisions in any given year. The commenter is correct that the activity of "re-application of general permits" at 2 burden hours per year would only apply to sources with general permits, and that another activity, "permit renewal" at 200 burden hours per year, would only apply to sources with standard permits. Both of these activities reflect the requirements of title V for sources to prepare permit applications for permit renewals, which for general permits, may be streamlined, compared to standard permits. [See § 70.6(d)(2), which allows applications for general permits, including permit renewal applications, to "deviate from the requirements of § 70.5," which applies for standard permits.] However, title V sources are subject to many other activities the commenter did not acknowledge. For example, another activity listed in the table, "prepare monitoring reports" at 80 hours per source per year, would apply to sources with general permits and standard permits. [See the assumption section of the ICR (page 36), which specifies that "[a]ll sources with issued permits (including those covered by general permits) will report monitoring data semi-annually and compliance certifications annually."] Also, the 2004 ICR is silent with respect to whether the remaining activities in the table would be required of sources with general permits, but many of them would apply to such sources because § 70.6(d) requires general permits to "comply with all requirements applicable to other part 70 permits." Certain of these remaining activities may be streamlined or simplified for sources with general permits, compared to sources with standard permits, but the ICR does not provide different burden hour estimates to acknowledge these differences. For example, sources with general permits would have to prepare an initial permit application when they apply for coverage under the general permit, consistent with § 70.6(d)(2), but the ICR lists the activity of "prepare application" at 300 hours per source per year, without estimating the potential reduction in burdens and costs that may occur through streamlined permit applications for general permits. Although the information in the 2004 ICR is more detailed, our analysis for the final rule results in the same conclusion as our review of the 2000 ICR for the proposal: That title V costs would be somewhat lower for sources with general permits, compared to sources with standard permits. Thus, the view of the commenter that title V costs would not be significant for area sources with general permits is not supported by the 2004 ICR.

Another commenter criticized our reference in the proposal of the $7,700 average cost estimate for title V sources, taken from the 2000 ICR, because that value reflects an average from among all sources, including the biggest industrial facilities in the country, and the costs to a smaller source obtaining either an individual or general permit should be less. In response, EPA agrees that costs for area sources are likely to be lower than the average cost of issuing all title V permits to all sources, for the reasons indicated by the commenter. EPA referenced the average cost of title V for all sources in the proposal because the cost estimates of the ICRs are the best estimates of title V costs available, even though they suffer from the limitations noted by the commenter. EPA's assessment of costs and burdens of title V for area sources covered by today's rule assumed that costs would be lower than the average for all sources, but still significant in light of the characteristics of the area sources. The 2004 ICR estimates average annual title V costs for all sources at $7,300, and it also does not provide all the information one would need to determine specific costs for area sources, whether they have general or standard permits.

Each ICR developed by EPA is based on the best information available to the Agency at the time it is prepared, such that more realistic estimates of burdens and costs for title V sources in general would be found in more recent ICRs, as implementation experience is gained. In addition, each ICR is approved by OMB for a set period of time in the future (typically three years), until the next ICR is approved, or the current ICR is extended.

EPA relied to some extent on the information in the ICRs for this rulemaking because it is the best information available on title V burdens and costs and no one submitted any better information to analyze title V burdens and costs for these area sources. EPA has conducted outreach and provided a 60-day public comment period to collect information on the costs and burdens for these sources for this rulemaking, and we provided a similar opportunity for the current ICR. No one submitted, or cited to, any more accurate and complete cost estimates for general permits under title V than those available to EPA. See the notice of March 23, 2004 (69 FR 13524) soliciting comment on the current ICR (Attachment 1 of the current ICR).

IX. Effective Date of Today's Final Rule Under the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act (APA) generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, section 553(d)(1) of the APA, provides that a substantive rule which grants or recognizes an exemption or relieves a restriction, may take effect earlier. Today's final rule grants an exemption from title V permitting requirements for a large number of area sources, so we make this final rule effective immediately.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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, adversely affecting in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, public health or safety in 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 of 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.

Under Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises important legal and policy issues. As such, this rule was submitted to OMB for review. Because this rule exempts area sources that would be subject to title V requirements absent this final rule, this final rule reduces burdens on area sources, and thus it is not economically significant. Also, area sources subject to the secondary lead NESHAP are already subject to title V (since their earlier deferral has expired) and this final rule does not change this, so this final rule does not change burdens for them. The final rule does not impose any burdens and therefore a detailed economic analysis is unnecessary.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Instead, it reduces such burdens by exempting a large number of area sources from title V requirements. However, the information collection requirements in the existing regulations (parts 70 and 71) were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The existing ICR for part 70 is assigned EPA ICR number 1587.06 and OMB control number 2060–0243; for part 71, the EPA ICR number is 1713.05 and the OMB control number is 2060–0336. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20004 or by calling (202) 566–1672. 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 purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able 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 numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, 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 today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule reduces economic impacts on small entities by exempting certain categories of "non-major" industrial sources from the permitting requirements under title V of the Clean Air Act (Act). These sources tend to be smaller businesses and there are estimated at up to 38,000 small entities. They are currently subject to title V permitting (40 CFR parts 70 and 71) under previous rulemaking actions, and they will remain subject to these requirements until we exempt them. We have therefore concluded that today's final rule will relieve regulatory burden for these affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates under the regulatory provisions of title II of the UMRA for

State, local, or tribal governments or the private sector. Today's final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This final rule exempts a large number of sources from title V operating permit programs, which will reduce the duties government entities with title V programs would be required to perform and it will remove the requirement for many private sector entities to obtain operating permits under title V programs. Therefore, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule exempts a large number of area sources from the requirement to obtain operating permits under title V. As such it also removes the requirements for small governments with approved operating permit programs to issue permits to those area sources. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

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, or on the distribution of power and responsibilities among the various levels of government."

This final rule 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. Today's rule will not impose any new requirements under title V of the Clean Air Act, and it will not affect the ability of States to issue non-title V permits to these area sources, if they so choose. Accordingly, it will not substantially alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this final rule.

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

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes."

This final rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements on Indian tribal governments under title V of the Clean Air Act. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This final rule is not a "significant energy action," as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (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. This final rule exempts a large number of small sources from the obligation to obtain an operating permit under title V of the Clean Air Act and 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, Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this final rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. 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. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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 rule will be effective December 19, 2005.

List of Subjects

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 9, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart M—[Amended]

■ 2. Section 63.320 is amended by revising paragraph (k) to read as follows:

§ 63.320 Applicability.

* * * * *

(k) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

Subpart N—[Amended]

■ 3. Section 63.340 is amended by revising paragraph (e) to read as follows:

§ 63.340 Applicability and designation of source.

* * * * *

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

■ 4. Table 1 to Subpart N is amended by revising the entry for § 63.1(c)(2) to read as follows:

TABLE 1 TO SUBPART N OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
*	*	*
§ 63.1(c)(2)	Yes	§ 63.340(e) of Subpart N exempts area sources from the obligation to obtain Title V operating permits.
*	*	*

Subpart O—[Amended]

■ 5. Section 63.360 is amended by:

■ a. Revising the entry for § 63.1(c)(2) in Table 1; and

■ b. Revising paragraph (f).

The revisions read as follows:

§ 63.360 Applicability.

* * * * *

TABLE 1 OF SECTION 63.360.—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
*	*	*	*
63.1(c)(2)	Yes		§ 63.360(f) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	*

* * * * *

(f) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

* * * * *

Subpart T—[Amended]

■ 6. Section 63.460 is amended by adding paragraph (h) to read as follows:

§ 63.460 Applicability and designation of source.

* * * * *

(h) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your

status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

§ 63.468 [Amended]

■ 7. Section 63.468 is amended by removing and reserving paragraph (j).

■ 8. Appendix B to Subpart T is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX B TO SUBPART T OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART T

Reference	Applies to subpart T		Comment
	BCC	BVI	
*	*	*	* * * * *
§ 63.1(c)(2)	Yes	Yes	Subpart T, § 63.460(h) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	* * * * *

Subpart RRR—[Amended]

■ 9. Section 63.1500 is amended by revising paragraph (e) to read as follows:

§ 63.1500 Applicability.

* * * * *

(e) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.

* * * * *

■ 10. Appendix A to Subpart RRR is amended by revising the entry for § 63.1(c)(2) to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
*	*	*	* * * * *
§ 63.1(c)(2)	.....	Yes	§ 63.1500(e) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
*	*	*	* * * * *

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Section 70.3 is amended as follows:
■ a. By revising paragraph (a) introductory text.
■ b. By removing and reserving paragraph (b)(3).
■ c. By revising paragraph (b)(4) introductory text.

§ 70.3 Applicability.

(a) *Part 70 sources.* A State program with whole or partial approval under this part must provide for permitting of the following sources:

* * * * *

(b) * * *

(4) The following source categories are exempted from the obligation to obtain a part 70 permit:

* * * * *

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

§ 71.3 [Amended]

■ 2. Section 71.3 is amended by removing and reserving paragraph (b)(3).

[FR Doc. 05–24072 Filed 12–16–05; 8:45 am]
BILLING CODE 6560–50–P