BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Final Rule:	)	
	)	
National Emission Standards for Hazardous	)	
Air Pollutants for Area Sources: Industrial,	)	RIN 2060-AM44
Commercial, and Institutional Boilers	)	EPA Docket No. OAR-2006-0790
	)	
_____	)	

PETITION FOR RECONSIDERATION

Pursuant to Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B), the American Chemistry Council ("ACC") hereby petitions the Administrator of the United States Environmental Protection Agency ("EPA") to reconsider portions of the final rule National Emissions Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers ("Final Rule"), published in the Federal Register at 76 Fed. Reg. 15,554 (Mar. 21, 2011). As set forth in detail below, ACC respectfully requests that EPA:

- **Revise the startup/shutdown provisions to clarify their applicability**
- **Provide notice and an opportunity to comment on the affirmative defense provision for malfunctions**
- **Revise the "subsequent performance test" requirements to fix the apparent drafting mistakes in the "less frequent testing" provisions of §§ 63.11220 (b) and (c)**
- **Revise the work practice and tune up management practice timing deadlines from March 21, 2012 to March 21, 2014**
- **Provide notice and an opportunity to comment on the monitoring requirements for carbon monoxide**
- **Reconsider the requirement for a source to submit the energy assessment report; clarify the scope of the energy assessment; and, clarify EPA's intent in finalizing "maximum" time frames for conducting an energy assessment.**

In addition, we have identified language in the regulatory provisions of the Final Rule that we believe needs to be corrected or clarified and we provide those examples at the end of this petition.

I. THE PETITIONERS

ACC is a not-for-profit trade association that participates on its members' behalf in administrative proceedings and in litigation arising from those proceedings. ACC represents the leading companies engaged in the business of chemistry. These companies rely in part on the use of industrial boilers that are subject to the final rule.

II. GROUNDS FOR RECONSIDERATION

Pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA), if a petitioner shows "that it was impracticable to raise [its] objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment . . . and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule." 42 U.S.C. § 7607(d)(7)(B). As detailed below, each of the specific provisions for which ACC seeks reconsideration meets these requirements.

III. SPECIFIC PROVISIONS FOR WHICH RECONSIDERATION IS SOUGHT

A. EPA should revise the startup/shutdown provisions to clarify their applicability.

The final rule contains provisions relating to startup/shutdown and to malfunctions. As set forth below, ACC requests that EPA revise these provisions as follows: for startup/shutdown, EPA should clarify that it is work practice standards that apply during startup/shutdown and not emission standards or operating limits.

1. The Proposed Rule and ACC Comments

In the proposed rule, EPA stated that the Agency took into account startup and shutdown periods in promulgating the standards. ACC commented that EPA should promulgate work practice standards for SSM that would allow sources a specified time period for startup, shutdown and malfunction events as long as certain procedures were followed.

2. The Final Rule

In the Final Rule, EPA requires sources "to meet a work practice standard, including following the manufacturer's recommended procedures for minimizing startup and shutdown periods, to demonstrate compliance with the emission limits for all subcategories of new and existing area source boilers (that would otherwise be subject to numeric emission limits) during periods of startup and shutdown." 76 Fed. Reg. 15554, 15560 (March 21, 2011); § 63.11201; Table 2. ACC supports this significant common sense improvement from the proposed rule.

There are, however, two key issues that need to be clarified.[1] First, the regulatory language in § 63.11201 must be revised to make it clear that the emission limits set forth in

[1] These issues could not have been raised in comments on the proposed rule because EPA did not propose the work practice standards. These issues are of central relevance to the outcome of the rule because they deal with the key question of what standards apply during startup and shutdown. Therefore, these issues meet the requirements of Clean Air Act ("CAA") 307(d)(7)(B) for reconsideration.

Table 1 do not apply during startup and shutdown, as EPA stated in the preamble above. Rather, the work practice standards of Table 2 apply during those periods. Second, the same regulatory language must be revised to insure that the operating limits of Table 3 (operating limits for boilers with emission limits), as well as the requirements of Tables 6 (establishing operating limits) and 7 (demonstrating continuous compliance) do not apply during startup and shutdown. Again, it is the work practice standards of Table 2, and only those standards, that apply during startup and shutdown. Accordingly, ACC recommends that § 63.11201 be revised as follows:

> "63.11201 (d) These standards apply at all times, except during startup and shutdown, during which time you must comply only with Table 2."

B. <u>EPA should provide notice and an opportunity to comment on the affirmative defense provisions for malfunctions.</u>

In the proposed rule, EPA stated that malfunctions should not be viewed as a distinct operating mode, and, therefore, that any emissions at such times did not need to be factored into development of the standards, which, once promulgated, would apply at all times. 75 Fed. Reg. 31896, 31901-02 (June 4, 2010); proposed § 63.11201(c). ACC commented broadly that EPA's approach to SSM violated the Clean Air Act. ACC recommended that EPA should promulgate work practice standards for malfunction periods, as well as for startup and shutdown, as long as certain procedures were followed. ACC further recommended that such standards could require the development and implementation of an emissions minimization plan to apply during these events. *See* ACC Comments at 27-29, 32-33. EPA rejected ACC's comments, and instead EPA promulgated an entirely new provision that allows a source to assert an affirmative defense if it exceeds a numerical emission limit during a malfunction event as long as several conditions are met. *See* § 63.11226. This new provision is not a "logical outgrowth" of the proposal because it was not a part of the proposal, so ACC did not have an opportunity to raise the issues associated with the affirmative defense discussed below. EPA stated in its March 21, 2011 Notice of Reconsideration that it intends to reconsider the affirmative defense for malfunction events for major and area source boilers and for CISWI units and we strongly support that action. 76 Fed. Reg. 15266, 15267 (March 21, 2011).

EPA should, however, reconsider not just the affirmative defense as promulgated. Rather, EPA should broaden its reconsideration to include the Agency's approach to malfunction in general. Accordingly, ACC recommends that EPA reconsider the following issues:

- EPA and case law has for decades recognized that all technologies fail at some point; therefore EPA must provide a safety valve for technology-based standards during such time periods, and this is consistent with the D.C. Circuit's *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied*, 130 S.Ct. 1735 (2010) decision.

- EPA should promulgate work practice standards for malfunction periods, consistent with Section 112(h) of the Clean Air Act and *Sierra Club.*

- EPA's affirmative defense is not a substitute for setting emission standards for periods of malfunction for many reasons:

- It is not clear where EPA finds the legal authority in the Clean Air Act for shifting the burden of proving (or disproving) the key elements of an alleged violation -- normally EPA would have this burden in an enforcement action.

- Being able to assert a defense is obviously not the same as complying with specific work practice standards that take into account the limitations of technology -- sources may have to conservatively report a violation or certify noncompliance until there has been an enforcement action in which the source has successfully asserted the defense. This is unacceptable.

- EPA limits the affirmative defense to "civil penalties." First, it is not clear what this means. Does it cover civil administrative penalties under CAA § 113(d)? Does it cover noncompliance penalties under CAA § 120? How does the defense apply to state and local governments and citizen suits? Finally, EPA specifically states that the affirmative defense is not available for claims for injunctive relief. EPA does not provide a rationale for not extending the defense to injunctive relief, and there is no apparent reason why it should be so limited.

- The affirmative defense establishes 9 criteria (with some further subparts) that a source must satisfy in order to assert the defense, together with stringent notification requirements. ACC believes that many of these criteria are inappropriate or so vaguely worded that they will vitiate the use of the defense, and ACC will provide detailed discussion of the criteria in its comments on reconsideration. Finally, given the breadth of the information required to assert the defense, EPA's requirement of 2 day notification, and 45 day written report is unreasonable and unnecessary.

C. <u>EPA should revise the "subsequent performance test" requirements to fix the apparent drafting mistakes in the "less frequent testing" provisions of §§ 63.11220 (b) and (c).</u>

Section 63.11220 (a) provides that boilers with a heat input of 10 MMBtu or greater must conduct "subsequent" stack tests (i.e., after the initial stack test) every three years unless the source meets the requirements of §§ 63.11220 (b) through (d). But, as described below, because of what ACC believes to be a mistake in drafting, sources will never meet the requirements of (b) through (d).[2]

Section 63.11220 (b) provides that the source can conduct less frequent stack testing for PM and mercury if the source's stack tests "for at least <u>3 consecutive years</u> show that your emissions are at or below 75 percent of the emission limit..." (emphasis added). But, pursuant to § 63.11220 (a) above, the source would not be doing <u>annual</u> stack tests so the source would

[2] Because this mistake was made only in the final rule, ACC could not have commented on it during the comment period, and it is of central relevance to use of the "less frequent testing" requirements. Hence, reconsideration is appropriate.

never have "3 consecutive years" of tests. Hence, this provision appears to be a mistake, and should be deleted. Section 63.11220 (c) provides that if a boiler "continues to meet" the PM or mercury emissions limits, the source may choose to conduct stack tests every third year if emissions are at or below 75 percent of the emission limits. But, Section 63.11220(a) already allows the source to test every three years, so again, this provision appears to be a mistake, and it should be deleted.[3]

D. EPA should revise the work practice and tune up management practice timing deadlines from March 21, 2012 to March 21, 2014.

In the proposed rule, the deadline for all compliance requirements for existing sources was three years after promulgation. *See* proposed § 63.11196. In the final rule, EPA changes the deadline for existing sources "subject to a work practice standard or management practice standard of a tune up" to one year -- March 21, 2012. *See* § 63.11196 (a)(1). EPA did not propose a one year deadline requirement for a tune up, so ACC could not have commented on the appropriateness of such a short time frame, and the deadline for this compliance obligation is of central importance to the standard, therefore the requirements for reconsideration are met.

The March 21, 2012 deadline is also inconsistent with § 63.11223 and Table 2 which provide that affected sources subject to the work practice standard or tune-up provisions must do the tune up biennially. *See* §§ 63.11223 (a) and (b). And all of these provisions are inconsistent with the *major* source boiler MACT provisions which require compliance with work practice standards within three years after promulgation. *See* § 63.7495 (b).

Moreover, EPA has not explained its rationale for the change from three years to one year, other than to assert, with no factual support, that the Agency believes that one year is adequate. In the preamble to the rule, EPA states:

> EPA has determined that existing sources subject to a work practice standard of a tune-up must comply with this final rule no later than one year after publication of this final rule. We have determined that one year is adequate time for affected sources to meet the work practice or management practice standard, which includes a tune-up based on the manufacturer's recommendations.

76 Fed. Reg. 15577. Moreover, we could find only one specific comment focusing on a less than 3-year compliance time frame for tune-ups in the voluminous record for this rule, and even that comment provides no factual support for its assertion. A citizen commented:

> A biennial tune-up is required for boilers <10 MMBtu/hr, as described in section IV.C of the preamble and specified in 63.11210(d) and Table 2. A tune-up every

[3] Perhaps this mistake was made in the final rule because the proposed rule required annual testing with the possibility of testing every 3rd year if certain requirements were met. EPA may have forgotten to revise the provisions of §§ 63.11220 (b) through (d) when it revised the rule to allow testing every 3 years.

> two years is not unreasonable but 63.11196(a) allows a three year compliance schedule. There is no environmental benefit and little benefit to the boiler owner/operator in delaying the initial tune-up for three years. The compliance schedule for the initial tune-up should be changed to *two* years after publication of the rule.

(Emphasis added). Response to Comments, Vol. 3 at 291-292.

EPA responded, "*We agree* and have revised 63.11196(a) to add the requirement that boilers subject to the tune-up requirement must achieve initial compliance within *one* year after publication." (Emphasis added.) *Id.* The flaw in EPA's response is obvious. The commenter stated that a two year compliance schedule, instead of a three year compliance schedule is appropriate. While ACC does not necessarily agree that a two year compliance schedule for a tune up is appropriate, EPA does not explain how or why it transformed this comment into a one year requirement. Moreover, EPA does not have any factual support for such a one year requirement. Accordingly, the requirement is unsupported and not a logical outgrowth of what was proposed by the Agency.

ACC believes that a three year time frame to complete the initial tune-up is needed, with a biennial tune-up frequency thereafter. A three year time frame is not unreasonable given the fact that EPA estimates there are 183,000 existing area source boilers and that approximately 7,000 new area source boilers are likely to be constructed in the next three years. *See* 76 Fed. Reg. 15579 (Table 4). Area sources that are newly regulated by this Part 63 rule will need time to review and understand the new requirements. Sources will have to develop procedures for personnel and train personnel on the requirements to conduct burner inspections, inspect flame patterns, and to inspect air-to-fuel ratios, as required by this rule. In addition, stack modifications, such as the installation of a sampling port or a work platform, will be necessary for some boilers in order to access the stack and to implement the CO and O2 emission screening requirements. Some sources also will have the added complication that existing air permits require tune-ups for NOx emissions and now these sources will be required to tune-up the boiler to minimize both NOx and CO emissions to the extent practicable. Sites will be required to set up compliance assurance procedures and recordkeeping practices in order to satisfy this rule's requirements. Additionally, for some units, set boiler overhaul times might have already occurred or be scheduled, thereby precluding incorporation of all the tune-up requirements. All of these issues create a serious impediment to completing the tune-up within the first year.

Finally, a number of those 183,000 sources will seek assistance from the boiler manufacturer and/or outside consultants to conduct initial tune-ups and establish site-specific processes for continued compliance assurance. Because many major sources also will seek these resources, it is likely that the pool of available help will be seriously strained if initial tune-ups are to be completed within one year of the rule's promulgation.

E. <u>EPA should provide notice and an opportunity to comment on the monitoring requirements for CO.</u> <u>EPA should reconsider the monitoring requirements for carbon monoxide and revise the CO compliance requirements and the O_2 monitoring provisions, including the required location of the O_2 monitor</u>.

The final rule requires triennial Method 10 CO performance testing to demonstrate compliance with CO emission limits applicable to certain units and use of an O_2 CEMS to demonstrate compliance on a 12-hour block average basis with the minimum O_2 operating limit established during performance testing. The final rule also includes some specific O_2 monitoring requirements that are problematic. The requirement to use an O_2 CEMS and the prescriptive O_2 monitoring provisions were not included in the proposed rule and are not a logical outgrowth of what was proposed.

1. The Proposed Rule and ACC Comments.

In the proposed rule, EPA established CO emissions limits for several subcategories of sources. The proposed rule required units with heat input capacities less than 100 MMBtu/hr to demonstrate continuous compliance based on a 3-run average through an initial and thereafter annual performance stack test; for units 100 MMBtu/hr or greater, continuous compliance was to be demonstrated based on a daily average using a CO CEMS.

ACC's comments stated in pertinent part that the CO data used to establish the floor may not be representative of normal boiler operations and that the proposed emission standards may not be achievable at all times, even by the best performers. We noted that the testing used to establish CO limits was all conducted at steady load and that a boiler may have low CO emissions at steady load, but greater emissions as the load varies. We also stated that it is inappropriate to set daily average CO limits that must be met at all times based on 3-run stack tests that likely were conducted near full load conditions and at steady state operation. This method of establishing a standard fails to account for the variability of CO emissions over operating loads. If EPA is going to require CO CEMS to demonstrate compliance then the Agency must use CO CEMS data to set the standard. Moreover, if a CO CEMS were required, ACC highlighted the appropriateness of using CO data above 50% of rated capacity, and that a 30-day rolling average should be used as the compliance basis. *See* ACC Comments at pp. 22-31.

2. The Final Rule

In the Final Rule, EPA promulgated numeric CO emission limits only for coal-fired units and dropped the proposed requirement for all units to install CO CEMS. Instead, the rule requires triennial Method 10 CO performance testing to demonstrate compliance by those units with CO numeric emission limits, and use of an O_2 CEMS to demonstrate compliance on a 12-hour block average basis with the minimum O_2 operating limit established during performance testing.

We support EPA's rejection of the proposed requirement that every unit install a CO CEMS, especially when the proposed CO emission limit was based on stack test data obtained at full load conditions. However, we do not believe it is appropriate for EPA to require that O_2 levels be monitored in the stack or ductwork leading to the stack in order to ensure continuous compliance, nor is it appropriate for EPA to require that each O_2 CEMS be installed, operated and maintained pursuant to Performance Specification 3. Had EPA included the O_2 monitoring

issue in the proposed rule, ACC would have submitted comments that we believe would have been valuable to EPA in determining how best to shape this final requirement given that many existing boilers already use flue gas oxygen analyzers for indication, alarm, and O_2 trim control, where the fuel/air ratio is automatically controlled for optimum combustion conditions. We strongly believe that EPA must, through reconsideration, give proper notice of the O_2 monitoring provisions and allow ACC and others to comment on these provisions.

ACC also believes that since there are some units that will be or could be required to utilize CO CEMS by their regulatory authorities, that EPA should provide an appropriate alternative CO compliance method in lieu of using an O_2 CEMS, incorporating use of CO CEMS and an emission limit based on CO emissions during normal operation with compliance on a 30 day rolling average basis.

F. <u>EPA should reconsider the requirement for a source to submit the energy assessment report; clarify the scope of the energy assessment; and, clarify EPA's intent in finalizing "maximum" time frames for conducting an energy assessment.</u>

Some of the final rule's provisions relating to the performance of an energy assessment are problematic. We address them individually below.

Submittal of the Energy Assessment Report

1. The Proposed Rule and ACC Comments

Section 63.11215(b) of the proposed rule required an existing affected boiler with a heat input capacity of 10 MMBtu/hr or greater to submit the energy assessment report along with a signed certification that the assessment is an accurate depiction of the facility. ACC's comments on the proposed energy assessment stated, in pertinent part, that the breadth of the proposed assessment could unreasonably risk the public disclosure of confidential business information (CBI). We stated that energy usage within manufacturing facilities is directly and inextricably related to the processes being used and the qualities of the specific products being made. We expressed our concern over third-party auditors and EPA having access to CBI without affording it the necessary protections and over the required submittal of the energy assessment report. *See* ACC Comments at pp.40-51.

2. The Final Rule

In the final rule EPA revised the requirement that the energy assessment must be conducted by a third-party auditor and that the report must be submitted to EPA. Section 63.11214(c) of the rule requires the report to be submitted only upon request from EPA. We appreciate the consideration that EPA gave our comments and the revisions that were made in the final rule. However, we don't understand why EPA is requiring the submission, albeit upon request, of the energy assessment report from an area source but taking a different approach in the final boiler rule applicable to major sources. In the major source rule, section 63.7530(e) merely requires that a source submitting the Notification of Compliance Status include a signed certification that the energy assessment was completed. The provision does not require the

submittal, upon request or otherwise, of the energy assessment report. EPA explained in the Response to Comment (RTC) document that the change was made because of the numerous comments submitted that expressed concerns over CBI contained in the energy assessment report:

> "**Response:** Many commenters submitted concerns that the content of an energy report contains CBI. EPA has considered these concerns and removed the requirement to submit the entire report to the delegated authority. The final rule 63.7545(e) (8) (ii) requires only a certification that the energy audit was completed." *See* RTC Vol 2, p.1150.

A manufacturing facility area source energy assessment report is just as likely to contain CBI as a manufacturing facility major source report. EPA properly considered and acknowledged the need to prevent public disclosure of sensitive information through the submittal of the energy assessment report in the final boiler major source rule.

It appears that the Agency similarly intended to protect CBI in the area source rule based on its response to a comment in the RTC but, in its haste to meet the court ordered deadline for this rule, failed to revise the regulatory language to comport with its intent.

> "**Response:** In the final rule, the energy assessment is not required to be submitted to EPA or the permitting agency. The final rule requires that the permitting agency be notified that the energy assessment has been conducted according to the requirement in the final rule. The facility is required to keep records that the work practices and management practices were complied with. *See* RTC, Vol. 2 p.461.

We urge EPA to either revise the regulatory language through a technical clarification/correction as follows, or to reconsider and take comment on the requirement for area sources to submit, upon request, the energy assessment report. Our recommended technical clarification/correction of section 63.11241(c) would be:

> If you own or operate an existing affected boiler with a heat input capacity of 10 million Btu per hour or greater, you must submit a signed certification in the Notification of Compliance Status report that an energy assessment of the boiler and its energy use systems was completed **according to Table 2 of this subpart and is an accurate depiction of your facility** ~~and submit, upon request, the energy assessment report~~.

Scope of the Energy Assessment

1. The Proposed Rule and ACC's Comments

Section 63.11237 of the Proposed Rule defined Energy Assessment as follows:

> *Energy assessments* means an in-depth assessment of a facility to identify immediate and long-term opportunities to save energy, focusing on steam and process heating systems, which involves a thorough examination of the potential savings from energy efficiency

improvements, waste minimization and pollution prevention, and productivity improvement.

In addition, Table 2 of the Proposed Rule referenced identification of "major energy consuming systems", but that phrase was not defined. As the proposed definition makes clear, the focus is on the steam and process heating systems (though process heaters were no included in the Proposed Rule.)

In its comments, ACC stated in pertinent part that the proposed scope of the energy assessment is too broad and that it covers units that are not part of the "affected source". *See* pp. 40-51.

2. The Final Rule

After considering the comments, EPA redefined *energy assessment* to limit the scope of the assessment to that which is associated with the energy output of the boilers regulated by the rule. EPA explains in the preamble:

> …we have carefully limited the requirements to perform an energy assessment **to specific portions of the source that directly affect emissions from the affected boiler**, as indicated by the revised definition of an energy assessment in section 63.11237 of subpart JJJJJJ. **The emissions that are being controlled come from the affected source**. For a coal-fired unit, **the process changes resulting from a change in an energy using system will reduce the volume of emissions at the affected source.** For biomass-fired and oil fired area sources, **better management practices at energy using systems will reduce the emissions of HAP from the affected source by reducing fuel consumption and the HAP released through combustion of fuel. In either case, the requirement controls the emissions of the affected source.** 76 Fed. Reg. 115568 (emphasis added).
>
> The purpose of an energy assessment is to identify energy conservation measures (such as, process changes or other modifications to the facility) that can be implemented **to reduce the facility energy demand which would result in reduced fuel use…**
>
> **It is not EPA's intent to require an energy assessment for the entire facility; the energy assessment is only applied to existing boilers and their energy use systems located at area sources….**
>
> We have also added a definition for "energy use systems" to clarify the components for each boiler system and energy use system which must be considered during the energy assessment, **including elements such as combustion management, thermal energy recovery, energy resource selection, and the steam end-use management of each affected boiler. These revisions clarify that an energy assessment is only required for those portions of the facility using the energy generated from the affected boiler system.** *Id.* at 15573 (emphasis added.)

In the final rule, EPA included a definition of "energy use system", which as stated above was not defined in the proposed rule. Section 63.11237 defines energy use system to include energy use which in many cases is associated only with electricity use, e.g., compressed air systems, machine drive (motors, pumps, fans), process cooling, facility HVAC, building envelop(sic), and lighting. Where this electricity is purchased from others (such as an electric utility), it has no impact on the combustion unit fuel use or associated emissions regulated under this area source rule, and therefore is outside the intended scope of the energy assessment and inconsistent with EPA's preamble statements cited above. We request that EPA reconsider the definition of "energy use system" to give the public proper notice and allow comment on the definition. Alternatively, if EPA's intent is to limit the definition per its statements in the preamble, it could issue a clarification that energy uses *not* associated with affected boiler on the site are not part of the "energy use system."

We also note that Table 2 (76 Fed. Reg. 15602), subcategory 4, items (2) and (3) seem inconsistent in their wording. Item (2) requires the energy assessment to include "specifications of energy using systems" while item (3) requires an "inventory of major systems consuming energy from affected boiler(s)." Item (3) properly limits the inventory to boiler energy output. These inconsistencies need to be corrected.

We respectfully request that EPA clarify that the scope of the energy assessments is to be limited to those facilities and equipment associated with the energy output from the boilers regulated under Subpart JJJJJJ. In those cases where cogeneration is incorporated into the facility utilizing steam output from the regulated boilers and the cogenerated electrical output is utilized on site, then incorporation of those electricity using facilities and equipment is properly included within the scope of the energy assessment.

Energy Assessment Maximum Time Specification

1. The Proposed Rule and ACC's Comments

The proposed rule was silent on the appropriate length of time that might be required to undertake an energy assessment. ACC's comments expressed significant concern over the breadth of the proposed energy assessment and, depending on the size of the facility, the potential cost of the assessment. We did not submit any comments on the length of time that such an assessment might or should take because EPA's proposal did not raise the issue.

2. The Final Rule

In the definition of *energy assessment* found in section 63.11237 of the final rule, EPA specifies, depending on the affected boilers use of Btu per year heat input, the maximum time to be spent on the assessment. For units where the heat input is less than 1.0 TBtu/year, EPA specifies that an assessment "will be" either "one day or "3-day" long, depending on the heat input. The preamble fails to explain why EPA included maximum duration time frames in the final rule and why it chose the "one day" and "3-day" durations. However, the preamble clearly

states that the energy assessment requirements are a "standard" and "can be enforced." 76 Fed. Reg. 15568.

ACC is concerned that the "will be" phrasing of the duration time frames could result in a deviation or violation if a facility exceeds or fails to meet or falls short of the specified time frames. The final duration time frames were not proposed and therefore there was no opportunity to comment on them. Moreover, they add no benefit and only confuse sources trying to comply with the rule's requirements. For all of these reasons, we strongly urge EPA to eliminate them.

Technical Corrections/Clarifications

Table 7, 76 Fed. Reg. at 15605

We believe the wording of Table 7 could be confusing. Item 1.c. includes the word "block" in stating the requirement to "Maintaining opacity to less than or equal to 10 percent (daily block average)." However, other similar requirements do not include the word "block" in the compliance requirement statement. We recommend that EPA revise the language and insert the word "block" as shown in bold below:

3.c. "Maintaining the 12-hour **block** average pressure drop…"

4.c. "Maintaining the 12-hour **block** average sorbent or carbon injection rate…"

5.c. "Maintaining the 12-hour **block** average secondary amperage and voltage, or total power input…"

7.b. "Maintaining the 12-hour **block** average oxygen content…"

Section 63.11220, *id.* at 15594

We believe the requirements included in § 63.11220 (a), (b) and (c) conflict. Paragraph (a) requires all applicable performance testing to be conducted on a triennial basis. But paragraph (b) allows you to conduct performance testing less often if your tests "for at least 3 consecutive years" show emissions at or below 75% of the emission limit. We don't see how you could have "3 consecutive years" of tests if you are only required to test every three years, i.e., triennially. Paragraph (c) allows one to conduct performance tests for Hg and PM "every third year" if emissions are at or below 75% of the emission limit and this paragraph conflicts with paragraph (a), which already requires testing very three years without having to meet a threshold emission limit.

Based on statements in the preamble relating to stack testing for CO every three years, *see, id.* at 15577, it appears that EPA's intent is to require triennial testing as clearly articulated in paragraph (a). We therefore recommend that EPA delete paragraphs (b) and (c) to eliminate confusion and help ensure compliance with this requirement.