

EPA must reconsider this aspect of the Final Rule and seek feedback from commenters on specific work practices that should be adopted in light of the removal of exemptions from emission limits for startup, shutdown, and malfunction, since this request was not made in the Proposed Rule.

F. EPA's performance testing schedule in section 63.7321 requires redundant and impracticable testing.

In the Final Rule, EPA requires performance testing for particulate matter (PM) from capture systems and control devices applied to pushing emissions under 40 C.F.R. § 63.7321(a) "once every 5 years or at the beginning of each term of your title V operating permit, whichever is less." EPA revised the regulatory language in response to a comment in which the commenter noted that Title V permits for coke plants can take more than five years to be issued and requested that EPA establish an outside deadline of every five years.⁷⁸ In making this change, EPA failed to give notice to the regulated community that it was contemplating changing the timeframe for PM testing and did so without considering whether it could revise the performance testing requirement in a way that would reduce the costs of unnecessary and redundant testing. EPA must reconsider the deadline for PM performance testing under section 63.7321(a), taking into account the consequences of unduly burdensome and redundant performance testing. At a minimum, the testing under section 63.7321(a) and under the Title V permit should be aligned to ensure that the Final Rule does not trigger new, redundant testing requirements. This issue is of central relevance to the outcome of the Final Rule, because regulated entities like SunCoke must have an opportunity to comment on meaningful regulatory requirements.

Further, EPA has finalized a new section 63.7321(b), which requires testing "once every five years" for emissions from Bypass Vent Stacks. SunCoke would face significant challenges at some of its plants if required to comply with that provision. For example, some of SunCoke's HNR plants only conduct planned bypass venting every two years. SunCoke, therefore, would not be able to meet the performance testing schedule at 63.7321(b) unless it intentionally opened the Bypass Vent Stack for the sole purpose of testing, thereby allowing emissions that would not otherwise occur. SunCoke expects that EPA did not intend to promulgate a regulatory provision that requires a source to emit where it otherwise would not, particularly where there are reasonable alternatives.

As discussed in Section I.A, SunCoke was impermissibly deprived of adequate time to review and comment on the Proposed Rule, including the implications of EPA's proposed performance testing schedule under section 63.7321(b). EPA should reconsider the deadline for performance testing under section 63.7321(b) and allow for testing when Bypass Vent Stacks are already open due to planned bypass venting, rather than requiring plants to open Bypass Vent Stacks, and emit, for the sole purpose of testing. Providing regulated entities like SunCoke a reasonable means of compliance is of central relevance to the outcome of the Final Rule.

⁷⁸ 89 Fed. Reg. at 55722; *see also id.* (EPA acknowledging that the Title V permit cycle "can extend for many years beyond five years due to delays in permit reviews.").