

small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve and disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval and disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval and disapproval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing 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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by references, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1998.

Laura Yoshii,
Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(H); (c)(248)(i)(A)(3); (c)(248)(i)(B)(2); and (c)(257) to read as follows:

§ 52.220 Identification of plan.

- * * * * *
- (c) * * *
- (194) * * *
- (i) * * *

(H) South Coast Air Quality Management District.

(I) Rule 403.1, adopted on January 15, 1993.

* * * * *

(248) * * *

(i) * * *

(A) * * *

(3) Rules 52, 53, 54, amended on January 27, 1997.

(B) * * *

(2) Rule 403, amended on February 14, 1997, and Rule 1186, adopted on February 14, 1997.

* * * * *

(257) Plan revisions for the Coachella Valley Planning Area were submitted on February 16, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Fugitive dust control ordinances for: City of Cathedral City Ordinance No. 377, adopted on February 18, 1993; City of Coachella Ordinance No. 715, adopted on October 6, 1993; City of Desert Hot Springs Ordinance No. 93-2, adopted on May 18, 1993; City of Indian Wells Ordinance No. 313, adopted on February 4, 1993; City of Indio Ordinance No. 1138, adopted on March 17, 1993; City of La Quinta Ordinance No. 219, adopted on December 15, 1992; City of Palm Desert Ordinance No. 701, adopted on January 14, 1993; City of Palm Springs Ordinance No. 1439, adopted on April 21, 1993; City of Rancho Mirage Ordinance No. 575, adopted on August 5, 1993; and County of Riverside Ordinance No. 742, adopted on January 4, 1994.

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[FR Doc. 98-32563 Filed 12-8-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6197-8]

RIN 2060-AC19

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Rule Clarifications; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: On January 17, 1997, the EPA amended certain portions of the "National Emission Standards for

Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks." This rule is commonly known as the Hazardous Organic NESHAP or the HON. Among the changes made to the rule in that action, the EPA added a definition for "enhanced biological treatment systems or enhanced biological treatment processes" to the rule and made clarifying revisions to appendix C of part 63. On August 22, 1997, the EPA proposed corrections to this definition in order to clarify its meaning and proposed revisions to appendix C of part 63 to reflect the clarification of the definition for "enhanced biological treatment systems or enhanced biological treatment processes." The August 22, 1997 document also proposed to revise the compliance demonstration procedures for biological treatment units to remove restrictions on the use of the batch test procedure. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: December 9, 1998.

ADDRESSES: Docket. Docket No. A-90-23, containing the supporting information for the original NESHAP and this action, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M-1500, first floor, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260-7548 or 260-7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet S. Meyer, Coatings and Consumer Products Group, at (919) 541-5254 (meyer.jan@epamail.epa.gov). For technical questions on appendix C and wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541-5499 (manning.elaine@epamail.epa.gov). The mailing address for the contacts is Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities and Background Information:

A. Regulated Entities

The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry ..	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. This action is expected to be of interest to owners and operators subject to this rule who plan to use biological treatment to comply with control requirements for wastewater streams. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F and are located at facilities that are major sources as defined in section 112 of the Clean Air Act (the Act). Potentially regulated entities generally are companies that manufacture industrial organic chemicals and cyclic organic crude and intermediates. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background on the Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), the EPA published in the **Federal Register** the NESHAP for the SOCMI, and for several other processes subject to the equipment leaks portion of the rule. These regulations were promulgated as subparts F, G, H, and I in 40 CFR part 63, and are commonly referred to as the hazardous organic NESHAP, or the HON. Since the April 22, 1994 **Federal Register** publication, there have been several amendments to clarify various aspects of the rule. Readers should see the following **Federal Register** documents for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR

18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); December 5, 1996 (61 FR 64571); January 17, 1997 (62 FR 2721); and August 22, 1997 (62 FR 44608).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company (Dow) filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association v. EPA*, 94-1463 and 94-1464 (D.C. Cir.) and *Dow Chemical Company v. EPA*, 94-1465 (D.C. Cir.). The petitioners raised over 75 technical issues on the rule's structure and applicability. Issues were raised regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, the EPA proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule. On December 5, 1996 and January 17, 1997, the EPA took final action on the amendments proposed on August 26, 1996. Subsequently, the EPA determined that some revisions to the definition of "enhanced biological treatment systems or enhanced biological treatment processes" and to appendix C of part 63 might be appropriate. These revisions were proposed on August 22, 1997 at 62 FR 44608.

C. Public Comment on the August 22, 1997 Proposal

Three comment letters were received on the August 22, 1997 **Federal Register** document that proposed changes to the rule. All comment letters received were from industry representatives and trade associations. While the commenters were supportive of the proposed rule amendments, they also expressed concerns with the clarity of the examples used in the preamble to describe systems that do and systems that do not meet the intent of the definition. The EPA has considered these suggestions and, where appropriate, has provided clarification of these examples in this document. The EPA has also developed a technical support document to provide additional information for use in evaluating whether a biological treatment unit meets the definition of "enhanced biological treatment system or enhanced biological treatment process." This document may be obtained from the Air and Radiation Docket and Information Center. It may also be obtained over the Internet at "<http://www.epa.gov/ttn/>

oarp/ramain.html." The Technology Transfer Network (TTN) provides information and technology exchange in various areas of air pollution control, including copies of rules and supporting documents. If more information on TTN is needed, contact the systems operator at (919) 541-5384.

D. Judicial Review

Under Section 307(b)(1) of the Act, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under Section 307(b)(2) of the Act, the requirements that are subject to today's publication may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Clarification of Definition of Enhanced Biological Treatment System or Enhanced Biological Treatment Process

The August 26, 1996 proposed changes to the wastewater treatment provisions of the HON included provisions that provided easier compliance demonstration options for well-mixed activated sludge systems that are used to control readily biodegraded compounds. In that proposed change to the April 1994 final rule, the compounds listed in table 9 of subpart G were divided into three lists; these lists were presented in table 36 of subpart G. In the proposal, a performance evaluation would not have been required for an activated sludge system if it met the definition of "enhanced biological treatment system or enhanced biological treatment process" and if the unit was controlling wastewater streams that contained only list 1 compounds. The August 1996 proposed revisions to the rule also required a performance demonstration for activated sludge systems used to treat a combination of list 1 and list 2 and/or list 3 compounds.

The August 1996 proposal defined an enhanced biological treatment system as an aerated treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation.

This definition of "enhanced biological treatment system or enhanced biological treatment process" was intended to

reflect the basis for the simplified compliance approach for some systems. The three lists of compounds in table 36 of subpart G were developed by modeling performance of an activated sludge system that was a thoroughly mixed biological treatment unit. (A thoroughly mixed or completely mixed system is a biological treatment unit where biomass and wastewater entering the tank are dispersed quickly throughout the tank such that the system achieves or approaches uniform characteristics throughout the tank (Docket number A-90-23, item VII-B-8).) After the August 1996 proposal, the EPA learned that some were interpreting the proposed definition of "enhanced biological treatment system or biological treatment process" to apply more broadly than intended. In the January 17, 1997 final rule, the phrase "homogeneously distributed" was added to the second sentence of the definition to clarify the EPA's intent to define a well-mixed biological treatment unit. The EPA thought that this revision would better reflect the modeling and clarify the EPA's intent to limit the types of biological treatment units that could use the simplified compliance option to systems that were completely back mixed. The EPA also believed that this change did not alter the meaning of the term.

Following publication of the January 17, 1997 final rule, the EPA learned that industry representatives were concerned that the revised definition could be read to require absolute uniformity in the biomass concentration. These industry representatives pointed out that they believed that such a reading of the definition could preclude any system from using the simplified compliance approach and the performance evaluation exemption. It was not the EPA's intent that the phrase "homogeneously distributed" be interpreted this narrowly. Therefore, on August 22, 1997 the EPA proposed clarifying changes to the definition of "enhanced biological treatment system or enhanced biological treatment process" and proposed parallel conforming changes to appendix C to part 63.

Today's action promulgates without any changes, the definition, proposed in the August 22, 1997 document, of "enhanced biological treatment system or enhanced biological treatment process." That definition reads as follows:

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes

biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

The description of a "thoroughly mixed treatment unit" in the definition is intended to convey the concept of an activated sludge system that is designed and operated to approach or achieve the characteristics of a completely back mixed system. Because the EPA does not intend the definition to allow only systems with perfect uniformity in characteristics, a "thoroughly mixed treatment unit" is described as a unit that is "designed and operated to approach or achieve uniform biomass distribution and organic compound concentration." This description is intended to recognize that well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. This was the intended meaning of the definition promulgated on January 17, 1997 and is also the intended meaning of the definition promulgated in today's action.

The EPA received three comment letters in response to the August 22, 1997 **Federal Register** proposal. While all of the commenters agreed with the proposed definition of "enhanced biological treatment system or enhanced biological treatment process," they expressed a concern that the examples in the preamble did not fully reflect the intent of the definition. The objections to the first example in the August 22, 1997 preamble were that the discussion referred to the units as having "uniform" characteristics instead of "approaching or achieving uniform characteristics" as described in the proposed definition. In the example, the system that was described as meeting the enhanced biological treatment system definition was characterized as a well-designed, well-operated, and well-maintained activated sludge system that has uniform characteristics in the aeration unit. The EPA agrees with the commenters that this example only illustrates a hypothetical ideal system and it would have been more useful to have described the unit as one that "approaches uniformity throughout the aeration unit" instead of as one that is "uniform." The EPA recognizes that it is

unrealistic to believe that aeration units will have completely uniform characteristics and also recognizes even well-designed complete mix systems may still have small insignificant stagnant zones or other minor deviations from complete mixing. Other relevant aspects of this first example are that the biological treatment unit of this enhanced biological treatment system would be thoroughly mixed throughout the unit and biomass and wastewater entering the unit would be quickly dispersed throughout the unit. The design of the unit would be such that thorough mixing and quick dispersion of the biomass and wastewater entering the unit would occur. The design and operation of the biological treatment unit would also take into account mixing, quick dispersion of the biomass and wastewater entering the unit, and the location of the wastewater inlet with regards to intake suction of surface aerators and the opportunity for volatilization prior to biodegradation.

In the second example in the proposal preamble, the EPA's intent was to make a general statement concerning the relationship between system size and location of the inlet and the number of inlets. The following adjustment to the example clarifies the intent. In smaller size units that approach a complete back mixed system, thorough mixing and quick dispersion may be achieved with a round or square tank and only one influent. For larger scale systems that have more difficulty reaching the complete back mixed conditions, thorough mixing and quick dispersion could be achieved by having multiple influents of biomass and wastewater. In either case, the biological treatment unit would approach or achieve uniform distribution of organic concentration and mixed liquor volatile suspended solids (MLVSS) throughout the vessel where the biological reactions occur.

A plug-flow system is an example of a biological treatment system that does not meet the enhanced biological treatment system definition. Plug-flow systems typically occur in long tanks with a high length-to-width ratio in which longitudinal dispersion is minimal or absent (Docket number A-90-23, item VII-B-8). Plug-flow systems are not considered acceptable units for the performance test exemption because they tend to have higher air emissions at the front of the system where the concentration is higher. The modeling used to develop the simplified compliance approach for systems meeting the definition for an "enhanced biological treatment system or enhanced biological treatment process" did not address plug-flow systems. The EPA did

not evaluate the performance of plug-flow systems in the development of the three lists for the simplified compliance approach due to the complexity of plug-flow systems. The wide range in characteristics of plug-flow systems led the EPA to conclude that these systems had to be modeled using site-specific characteristics. Consequently, these systems are required to demonstrate compliance through use of the procedures in appendix C. The exclusion of plug-flow biological treatment systems from the simplified compliance demonstration should not be interpreted as implying that a well designed and operated plug-flow biological treatment system would not achieve the required removal of a compound and, thus, not represent an acceptable means of compliance. If correctly evaluated through the applicable procedures in appendix C to part 63, they can be acceptable.

Examples of additional biological systems that would not meet the enhanced biological treatment system definition would be units that are not thoroughly mixed throughout the aeration unit and that have large concentration gradients between the inlet and the outlet of the aeration unit. Such biological units do not quickly disperse the biomass and wastewater entering the unit throughout the unit and tend to concentrate the volatile organics in a zone with relatively high air stripping rates.

Two commenters also objected to an example in which closeness of influent to the aerators was cited as a factor that would prevent a system from meeting the definition of enhanced biological treatment system. The commenters understood the example to be introducing the use of a criterion of the distance between the influent and an aerator as a de facto measure of poor mixing. The commenters pointed out that if the system achieves quick dispersion of the biomass and wastewater entering the unit, the spatial distance between any aerators or other mixing equipment and the influent is inconsequential. One of the commenters noted that simple spatial distance is not the important issue, rather the issue is whether the influent, recycle biomass, and basin contents are mixed such that the material which is aerated is a mixture of these materials rather than the raw influent. One of the two commenters requested that the EPA delete this example and address this issue through guidance. Both commenters also requested that the EPA state that the examples in the preamble are not intended to provide guidance regarding determinations of whether a

system meets the definition of an "enhanced biological treatment system or enhanced biological treatment process."

As a result of these comments, the EPA realized that the example lacked sufficient specificity to explain the basis for the EPA's concern. The EPA is therefore correcting this example to read:

Other examples of units that would not meet the definition include a unit where the influent is introduced close to the *intake suction of a surface aerator*, increasing the opportunity for volatilization prior to biodegradation, and a unit where the influent is introduced close to a discharge point such that channeling occurs.

Introduction of the influent close to the intake suction of a surface aerator is of concern because the more concentrated influent stream may be picked up and sprayed through the air thereby increasing losses due to volatilization. It is recommended that the influent be introduced in the return stream of the aerator to ensure mixing of the influent and destruction by the biomass before the material is sprayed through the air by the surface aerators.

The EPA agrees with the commenters' suggestion that the EPA should provide detailed technical guidance for determining whether a biological treatment unit meets the definition of "enhanced." This is important because the discussion in this document is limited to key factors and it is necessary to consider all factors that can influence mixing time and rate of volatilization before concluding that a system meets the criteria in the definition for enhanced biological treatment system. The EPA has developed additional information to assist in the determination of whether a biological treatment unit meets the enhanced biological treatment system definition. The additional information is available from the Air and Radiation Docket and Information Center and is also available through the Internet on the TTN website at "<http://www.epa.gov/ttn>." The EPA is presently working on additional information to assist in compliance demonstrations for biological treatment units that are not thoroughly mixed treatment units and, hence, do not meet the definition of enhanced biological treatment system. When this information is available, it will be available from the Air and Radiation Docket and Information Center and from the TTN.

III. Revisions to Requirements for Determining Site-Specific Fraction Biodegraded

All comments were supportive of the proposed amendments to revise the requirements in subpart G for determining site-specific fraction biodegraded (F_{bio}). Today's action issues the proposed revisions without change. Specifically, the EPA is revising § 63.145(h)(2) to allow use of the batch test procedure in appendix C for any type of biological treatment system. Today's action also revises table 36 by combining the list 2 and list 3 compounds into a new list 2 in table 36. These changes are being made to § 63.145(h) to provide more flexibility and to simplify this section of the rule.

IV. Revisions to Appendix C To Part 63

All comments were supportive of the proposed amendments to appendix C to part 63 to reflect the proposed revision of the definition for "enhanced biological treatment system or enhanced biological treatment process." Today's action issues those proposed revisions without change.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See the Act section 307(d)(7)(A).)

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060-0282. An Information Collection Request (ICR) document was prepared by the EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460 or by calling (202) 260-2740.

These revisions to the rule do not change the information collection requirements of the rule, and the currently approved OMB ICRs are still in force for the amended rule. The changes consist of revised definitions, alternative test procedures, and clarifications of requirements. The changes are not additional requirements and do not increase the information collection burden. Consequently, the ICR has not been revised for these amendments to the rule.

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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety 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 entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the EPA has determined that this final rule is not a "significant regulatory action" within the meaning of the Executive Order. The amendments issued today clarify the rule and remove restrictions on use of an alternative test procedure. These amendments do not add any new control requirements. Therefore, this regulatory action is considered "not significant" and OMB review is not required.

D. Regulatory Flexibility/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business

Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the Agency determines that a rule will have a significant economic impact on a substantial number of small entities.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final amendment to the rule. The EPA has also determined that this amendment 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 government jurisdictions. See the April 22, 1994 **Federal Register** (59 FR 19449) for the basis for this determination. The changes to the rule merely clarify existing requirements and therefore, do not create any additional burden for any of the regulated entities.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. § 801, *et seq.*, as added by the SBREFA 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. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the 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 9, 1998.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Under section 205, the EPA must select the least costly, most cost-effective, or least burdensome

alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector in any one year. Therefore, the requirements of sections 202 and 205 of the Unfunded Mandates Act do not apply to this action. The EPA has likewise determined that the action promulgated today does not include any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the Unfunded Mandates Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104-113, § 12(d) (15 U.S.C. 272 note), directs the 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This regulatory action amends a definition and makes clarifying revisions to appendix C of part 63 to reflect the clarification of the definition. Thus, this action does not involve any technical standards that would require the EPA to consider voluntary consensus standards pursuant to section 12(d) of the NTTAA.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive

Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. 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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 considered not "economically significant" as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The amendments issued today clarify the rule and remove restrictions on use of an alternative test procedure and do not add any new requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 30, 1998.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40 chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

2. Section 63.111 is amended by revising the definition of "enhanced biological treatment system or enhanced biological treatment process" to read as follows:

§ 63.111 Definitions.

* * * * *

Enhanced biological treatment system or enhanced biological treatment process means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration

unit(s) by either submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

* * * * *

3. Section 63.145 is amended by revising paragraph (h) introductory text and paragraph (h)(2) to read as follows:

§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

* * * * *

(h) *Site-specific fraction biodegraded* (F_{bio}). The compounds listed in table 9 of this subpart are divided into two sets for the purpose of determining whether F_{bio} must be determined, and if F_{bio} must be determined, which procedures may be used to determine compound-specific kinetic parameters. These sets are designated as lists 1 and 2 in table 36 of this subpart.

* * * * *

(2) F_{bio} determination. If a biological treatment process does not meet the

requirement specified in paragraph (h)(1)(i) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(ii) of this section. If a biological treatment process meets the requirements of paragraph (h)(1)(i) of this section but does not meet the requirement specified in paragraph (h)(1)(ii) of this section, the owner or operator shall determine F_{bio} for the biological treatment process using the procedures in appendix C to part 63, and paragraph (h)(2)(i) of this section.

(i) *Enhanced biological treatment processes.* If the biological treatment process meets the definition of “enhanced biological treatment process” in § 63.111 of this subpart and the wastewater streams include one or more compounds on list 2 of table 36 of this subpart that do not meet the criteria in paragraph (h)(1)(ii) of this section, the owner or operator shall determine f_{bio} for the list 2 compounds using any of the procedures specified in appendix C of 40 CFR part 63. (The symbol “ f_{bio} ” represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.) The owner or

operator shall calculate f_{bio} for the list 1 compounds using the defaults for first order biodegradation rate constants (K_1) in table 37 of subpart G and follow the procedure explained in form III of appendix C, 40 CFR part 63, or any of the procedures specified in appendix C, 40 CFR part 63.

(ii) *Biological treatment processes that are not enhanced biological treatment processes.* For biological treatment processes that do not meet the definition for “enhanced biological treatment process” in § 63.111 of this subpart, the owner or operator shall determine the f_{bio} for the list 1 and 2 compounds using any of the procedures in appendix C to part 63, except procedure 3 (inlet and outlet concentration measurements). (The symbol “ f_{bio} ” represents the site specific fraction of an individual Table 8 or Table 9 compound that is biodegraded.)

* * * * *

4. Table 36 of appendix to subpart G is revised to read as follows:

Appendix to Subpart G—Tables and Figures

* * * * *

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))

List 1	List 2
Acetonitrile	Acetaldehyde.
Acetophenone	Acrolein.
Acrylonitrile	Allyl Chloride.
Biphenyl	Benzene.
Chlorobenzene	Benzyl Chloride,
Dichloroethyl Ether	Bromoform.
Diethyl Sulfate	Bromomethane.
Dimethyl Sulfate	Butadiene 1,3.
Dimethyl Hydrazine 1,1	Carbon Disulfide.
Dinitrophenol 2,4	Carbon Tetrachloride
Dinitrotoluene 2,4	Chloroethane (ethyl chloride).
Dioxane 1,4	Chloroform.
Ethylene Glycol Monobutyl	Chloroprene.
Ether Acetate	
Ethylene Glycol Monomethyl	Cumene (isopropylbenzene).
Ether Acetate	
Ethylene Glycol Dimethyl Ether	Dibromoethane 1,2.
Hexachlorobenzene	Dichlorobenzene 1,4.
Isophorone	Dichloroethane 1,2.
Methanol	Dichloroethane 1,1 (ethylidene dichloride).
Methyl Methacrylate	Dichloroethene 1,1 (vinylidene chloride).
Nitrobenzene	Dichloropropane 1,2.
Toluidine	Dichloropropene 1,3.
Trichlorobenzene 1,2,4.	Dimethylaniline N,N.
Trichlorophenol 2,4,6	Epichlorohydrin.
Triethylamine	Ethyl Acrylate.
	Ethylbenzene.
	Ethylene Oxide.
	Ethylene Dibromide.
	Hexachlorobutadiene.
	Hexachloroethane.
	Hexane-n.
	Methyl Isobutyl Ketone.
	Methyl Tertiary Butyl Ether.
	Methyl Ethyl Ketone, (2-butanone).
	Methyl Chloride.

TABLE 36.—COMPOUND LISTS USED FOR COMPLIANCE DEMONSTRATIONS FOR ENHANCED BIOLOGICAL TREATMENT PROCESSES (SEE § 63.145(h))—Continued

List 1	List 2
	Methylene Chloride (dichloromethane). Naphthalene. Nitropropane 2 Phosgene. Propionaldehyde. Propylene Oxide. Styrene. Tetrachloroethane 1,1,2,2. TolueneTrichloroethane 1,1,1 (methyl chloroform). Trichloroethane 1,1,2. Trichloroethylene. Trimethylpentane 2,2,4. Vinyl Chloride. Vinyl Acetate. Xylene-m. Xylene-o. Xylene-p.

* * * * *

5. Section I of appendix C to part 63 is revised to read as follows:

Appendix C to Part 63—Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit

I. Purpose

The purpose of this appendix is to define the procedures for an owner or operator to use to calculate the site specific fraction of organic compounds biodegraded (F_{bio}) in a biological treatment unit. If an acceptable level of organic compounds is destroyed rather than emitted to the air or remaining in the effluent, the biological treatment unit may be used to comply with the applicable treatment requirements without the unit being covered and vented through a closed vent system to an air pollution control device.

The determination of F_{bio} shall be made on a system as it would exist under the rule. The owner or operator should anticipate changes that would occur to the wastewater flow and concentration of organics, to be treated by the biological treatment unit, as a result of enclosing the collection and treatment system as required by the rule.

The forms presented in this appendix are designed to be applied to thoroughly mixed treatment units. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit. Systems that are not thoroughly mixed treatment units should be subdivided into a series of zones that have uniform characteristics within each zone. The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

* * * * *

Appendix C [Amended]

6. Section III of appendix C of part 63, the second paragraph after (4) is revised to read as follows:

III. Procedures for Determination of f_{bio}

* * * * *

(4) * * *

* * * * *

Select one or more appropriate procedures from the four listed above based on the availability of site specific data. If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a bench top bioreactor to determine the first-order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a thoroughly mixed treatment unit. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used, is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and start-up of the unit. The flow chart in figure 1 outlines the steps to use for each of the procedures.

* * * * *

7. In appendix C of part 63, section III, in the second sentence of C. Inlet and Outlet Concentration Measurements

(Procedure 3), the phrase “uniform well-mixed or completely mixed system” is revised to read “thoroughly mixed treatment unit.”

[FR Doc. 98–32567 Filed 12–8–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300760; FRL 6046–1]

RIN 2070–AB78

Zinc phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of phosphine in or on potatoes, sugar beet (roots), and sugar beet (tops). This action is in response to EPA’s granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on potatoes and sugarbeets. This regulation establishes a maximum permissible level for residues of phosphine in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on May 1, 2000.

DATES: This regulation is effective December 9, 1998. Objections and requests for hearings must be received by EPA on or before February 8, 1999.