

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-7095-6]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On June 29, 1999, we issued the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (64 FR 34854). On November 22, 1999 (64 FR 63779), we proposed minor amendments to the June 29, 1999 promulgated rule concerning the regulation of surge control vessels and bottoms receiver vessels. These final amendments are necessary to correct discrepancies between the promulgated rule and our intent.

EFFECTIVE DATE: November 2, 2001.

ADDRESSES: Docket No. A-97-17 contains supporting information used in developing these amendments to the Generic MACT rulemaking subpart (40 CFR part 63, subpart YY). The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group, Emission Standards Division (MD-13), U.S.EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0837, facsimile (919) 541-0942, electronic mail address: markwordt.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. 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 will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the Clean Air Act (CAA). The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, <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.

Regulated entities. Categories and entities potentially affected by this action include:

Category	SIC ^a	NAICS ^b	Regulated entities
Industry	2869	325199	Producers of homopolymers and/or copolymers of, alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of polycarbonate.
Industry	2819	325188	Producers of, and recoverers of, HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).

^a Standard Industrial Classification.

^b North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1103(a)(1), (b)(1), (c)(1), and (d)(1) of the rule.

Judicial Review. Under section 307(b) of the CAA, judicial review of these final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 2, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to these amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial

review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. What Is the Background for the Amendments?

On June 29, 1999 (64 FR 34854), we published the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards, which promulgated standards for four major hazardous air pollutants (HAP) source categories (i.e., acetal resins (AR) production, acrylic and modacrylic fiber

(AMF) production, hydrogen fluoride (HF) production, and polycarbonate (PC) production). On November 22, 1999, we proposed amendments to the June 29, 1999 promulgated rule concerning the regulation of surge control vessels and bottoms receiver vessels (64 FR 63779). The proposed amendments changed the definition of "storage vessel" to include bottoms receivers and surge control vessels and changed the definition of "equipment" to not include bottoms receivers and surge control vessels. These amendments were necessary to correct discrepancies between the promulgated rule and our intent.

We received one comment on the proposed amendments. The commenter

stated that if the proposed amendments are finalized, acetal resins production surge control vessels and bottoms receivers that are part of the front-end process of the process train (and treated as front-end process vents in the promulgated rule) would be required to install additional controls beyond those determined to be maximum achievable control technology (MACT) for these sources. The commenter explained that when determining MACT for front-end process vents, the EPA intentionally identified surge control vessels and bottoms receivers that are part of the front-end of the process train as front-end process vents.

When we proposed the amendments to the definition of "storage vessel," we had no intention of changing the requirements for acetal resins production surge control vessels and bottoms receivers that are part of the front-end process of the process train. Therefore, we are finalizing amendments that maintain the requirements for acetal resins production front-end process vents (including surge control vessels and bottoms receivers that are part of the front-end process) as promulgated and intended.

For acetal resins production, we are requiring that bottoms receivers and surge control vessels that are part of the front-end process train be controlled under the acetal resins production front-end process vent provisions. The rationale for inclusion of surge control vessels and bottoms receivers as part of the MACT determination for front-end process vents can be found in a memorandum to the docket supporting these amendments (Docket No. A-97-17). These final amendments are consistent with our intent at promulgation of the original standards.

II. What Are the Impacts Associated With These Amendments?

This action consists of a clarification of our intent at the time of promulgation of 40 CFR part 63, subpart YY, and will not affect the estimated emissions reductions or the control costs for the standards promulgated for AR, AMF, HF, and PC production source categories on June 29, 1999 (64 FR 34854). This clarification makes it easier for owners and operators of affected sources, and for local and State authorities, to understand and implement the requirements of 40 CFR part 63, subpart YY.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "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 or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or 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 this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these final rule amendments do not constitute a "significant regulatory action" under the terms of Executive Order 12866. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

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

Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the

process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

The EPA has concluded that these final rule amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to these amendments.

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

Executive Order 13175 entitled, "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."

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate facilities that will be subject to this final rule. Thus, Executive Order 13175 does not apply to these final amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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 Agency must evaluate the environmental health or safety effects of

the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonable alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on safety risks. Furthermore, these amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

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, the 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 by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year.

Before promulgating an EPA 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 when they are inconsistent with applicable law. Moreover, section 205 allows the 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 as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it 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 EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

The EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There is no cost associated with these amendments. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these final amendments do not contain regulatory requirements that might significantly or uniquely affect small governments because they do not contain requirements that apply to such governments or impose obligations upon them. Therefore, today's final amendments are not subject to the requirements of section 203 of the UMRA.

Because these final rule amendments do not include a Federal mandate and are estimated to result in expenditures less than \$100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Therefore, the requirements of the UMRA do not apply to this action.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's final rule amendments. Because there is no cost associated with these amendments, the EPA has also determined that today's final rule amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule amendments on small entities, small entities are defined as: (1) A small business that has fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities.

G. Paperwork Reduction Act

The OMB approved the information collection requirements under the Generic MACT rule for the AR, AMF, HF, and PC production source categories and assigned the OMB control number 2060-0420 to the ICR. This approval expires September 30, 2002.

A copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), Office of Environmental Information, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

These final rule amendments will not impact the information collection estimates made previously for the Generic MACT consolidated rulemaking package. Therefore, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

As noted in the proposed amendments, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Public Law No. 104-113) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their 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. These final rule amendments do not involve technical standards.

I. 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. The EPA will submit a report containing these amendments 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

amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final rule amendments do not constitute a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective November 2, 2001.

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

These amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they do not constitute a significant regulatory action under Executive Order 12866.

List of Subjects for 40 CFR Part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Air emissions control, Administrative practice and procedures, Hazardous air pollutants, Hydrogen fluoride production, Intergovernmental relations, Polycarbonate production, Process vents, Recordkeeping and reporting requirements, Storage vessels.

Dated: October 24, 2001.

Christine Todd Whitman,
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.*

Subpart YY—[Amended]

2. Section 63.1101 is amended by revising the definitions for "equipment" and "storage vessel" to read as follows:

§ 63.1101 Definitions.

* * * * *

Equipment means each of the following that is subject to control under this subpart: pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve, connector, instrumentation system in organic hazardous air pollutant service as defined in § 63.1103 for the applicable process unit, whose primary product is a product produced by a source category subject to this subpart.

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Storage vessel or tank, for the purposes of regulation under the storage vessel provisions of this subpart, means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or

plastic) that provides structural support and is designed to hold an accumulation of liquids or other materials. Storage vessel includes surge control vessels and bottoms receiver vessels. For the purposes of regulation under the storage vessel provisions of this subpart, storage vessel does not include vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships; or wastewater storage vessels. Wastewater storage vessels are covered under the wastewater provisions of § 63.1106.

* * * * *

3. Section 63.1103 is amended by revising paragraph (a)(1)(i)(A) to read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

(a) * * *

(1) * * *

(i) * * *

(A) All storage vessels that store liquids containing organic HAP. For purposes of regulation, surge control vessels and bottoms receivers that are located as part of the process train prior to the polymer reactor are to be regulated under the front-end process vent provisions.

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