

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR–2003–0121; FRL–7932–2]

RIN A2060–AN09

**National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; amendments.

**SUMMARY:** On November 10, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing under the authority of section 112 of the Clean Air Act (CAA). We are amending the NESHAP by clarifying the compliance requirements for flares and the alternative standard, which limits the outlet concentration to 20 parts per million. We are amending the NESHAP by extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas, and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specify requirements for effluent from control devices, clarify the definition of the term continuous process vent, and correct several referencing and drafting errors. We are issuing the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

In the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that timely adverse comments are received.

**DATES:** The direct final rule is effective on August 30, 2005, without further notice, unless EPA receives adverse written comment by August 1, 2005, or if a public hearing is requested by July 11, 2005. If EPA receives such comments or a hearing is requested,

EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective, and which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2003–0121, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [air-and-r-docket@epa.gov](mailto:air-and-r-docket@epa.gov).
- Fax: (202) 566–1741.

- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.

- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

**Instructions:** Direct your comments to Docket ID No. OAR–2003–0121. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.regulations.gov) Web sites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), Office of Air Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address [mcdonald.randy@epa.gov](mailto:mcdonald.randy@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS*	Examples of regulated entities
Industry .....	3251, 3252, 3254, 3255, 3256, and 3259, with several exceptions.	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

\* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.2435 of the NESHAP. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of the direct final rule amendments will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the direct final rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

*Comments.* We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that timely adverse comments are received. If we receive such adverse comments on the amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by August 30, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments that 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 the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

- I. Why are we amending the rule?
- II. What amendments are we making to the rule?
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children for Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Congressional Review Act

#### I. Why Are We Amending the Rule?

On November 10, 2003, we promulgated NESHAP for Miscellaneous Organic Chemical Manufacturing as subpart FFFF in 40 CFR part 63 (68 FR 63852). Since promulgation of the NESHAP, we determined that the alternative standard, which limits the outlet concentration to 20 parts per million, did not contain several provisions that have been included in the same alternative standard in other rules, that the flare provisions are not consistent with other rules, that the procedures to account for dilution air added to vent streams before a combustion device are unnecessarily restrictive, and that the vapor balancing alternative for storage tanks could be extended to vapor balancing to barges.

#### II. What Amendments Are We Making to the Rule?

*Amendments to the Procedure for Correcting Measured Concentrations to Account for Supplemental Gases.* If you comply with an outlet concentration emission limit and use a combustion device, the NESHAP require you to correct the measured outlet concentration to 3 percent oxygen to account for dilution caused by adding supplemental gases to the emission stream prior to the control device. The direct final rule amendments add a second option that allows you to correct only for the actual amount of supplemental gas. This option is

consistent with the correction requirement in the final rule for noncombustion devices.

The correction to 3 percent oxygen was originally used in new source performance standards for air oxidation unit processes, distillation operations, and reactor processes in the synthetic organic chemical manufacturing industry (40 CFR part 60, subparts III, NNN and RRR). The value of 3 percent represents good engineering practice when oxygen-deficient streams are combusted with supplemental combustion air (*i.e.*, a supplemental gas). To prevent owners or operators from diluting streams to meet the outlet concentration emission limit for noncombustion devices, the NESHAP require correction of the actual flowrate of supplemental gases. The direct final rule amends 40 CFR 63.2450(i) to allow a correction based on the actual flowrate of supplemental gases, as well as the correction to 3 percent oxygen for combustion devices if supplemental gases are used as allowed by the NESHAP. In addition, the direct final rule amends the definition of supplemental gas to mirror the definition of supplemental combustion air in 40 CFR 63.1312, which is appropriate for both combustion and noncombustion devices.

*Clarification of the Initial Compliance Requirements for Flares.* The direct final rule clarifies the initial compliance requirements for flares because we understand the promulgated language has caused some confusion. If you use a flare to comply with an emission limit, the NESHAP specify that you must comply with the requirements in 40 CFR 63.982(b), which in turn, references 40 CFR 63.987. These are the only compliance requirements that apply to flares, including flares used to control batch process vents. Thus, the procedures in § 63.2460(c)(2)(i) of the NESHAP to demonstrate compliance with a percent reduction emission limit by comparing the uncontrolled and controlled emission limits apply only if you use a non-flare control device. You never have to demonstrate the percent reduction for a flare; you only have to meet the requirements in 40 CFR 63.987. The direct final rule adds a sentence to 40 CFR 63.2460(c)(2)(i) to clarify this point.

The requirement in 40 CFR 63.2460(c)(2)(ii) to establish emission profiles before conducting a performance test or design evaluation for a control device that controls emissions from batch process vents also applies when you use a non-flare control device. The direct final rule

revises 40 CFR 63.2460(c)(2)(ii) to clarify this point.

*Amendments to the Initial Compliance Requirements for Flares Used to Control Batch Process Vents.* The direct final rule adds a new paragraph (b)(4)(iii) to 40 CFR 63.2460 to specify that you may designate emission streams that are controlled with a flare as Group 1. By meeting the requirements in 40 CFR 63.987, the owner or operator demonstrates compliance with the HAP destruction requirements in the NESHAP.

*Amendments to Performance Testing for Demonstrating Initial Compliance with a Percent Reduction Requirement.* Section 63.2450(d) through (f) of the NESHAP specify that you must comply with various requirements of 40 CFR part 63, subpart SS, for performance testing provisions. One exception is that the option in 40 CFR 63.997(e)(2)(iv) to demonstrate compliance with a percent reduction emission limit by measuring total organic compounds (TOC) was prohibited by 40 CFR 63.2450(n) of the NESHAP. Since promulgation, we have determined that this restriction is unwarranted because 40 CFR 63.997(e)(2)(iv)(G) and (H) describe procedures for using Methods 25 and 25A of 40 CFR part 60, appendix A, for measuring TOC. The direct final rule removes 40 CFR 63.2450(n) to allow compliance with a percent reduction limit to be demonstrated by measuring either total organic HAP or TOC as specified in 40 CFR 63.997(e)(2)(iv).

*Amendments to the Alternative Standard.* The direct final rule amendments add additional options for the monitoring provisions to the alternative standard and adds planned routine maintenance provisions for storage tanks. The direct final rule amendments also permit compliance with the emission limits and work practice standards in Tables 1 through 4 to subpart FFFF of part 63 to be met by limiting the outlet concentration and demonstrating compliance with the outlet concentration emission limit through continuous emission monitoring. The direct final rule amendments allow monitoring of operating parameters as an alternative to adjusting measured concentrations to account for dilution caused by supplemental gases, indicate that the planned routine maintenance provisions apply under the alternative standard for control devices that are used to control emissions from storage tanks, and clarify a couple of references.

The introductory text in 40 CFR 63.2505(b) of the NESHAP currently requires you to meet the requirements specified in 40 CFR 63.1258(b)(5)(i) to

demonstrate compliance with the alternative standard. This reference inadvertently excludes the options in 40 CFR 63.1258(b)(5)(ii) for monitoring operating parameters as an alternative to adjusting the measured concentrations to account for the dilution caused by adding supplemental gases to the emission stream prior to the control device. For combustion devices, the option requires operation above minimum temperature and residence time limits and monitoring to demonstrate continuous compliance with the limits. For noncombustion devices used to control emissions from dense gas systems (*i.e.*, systems with oxygen levels less than 12 percent), the option requires calculation of a flowrate setpoint and monitoring of the flowrate to demonstrate continuous compliance with the setpoint. These options are as valid for miscellaneous organic chemical manufacturing sources as for pharmaceuticals production sources. The preamble to the proposed amendments to the NESHAP for pharmaceuticals production describes the rationale for these alternatives (65 FR 19152, April 10, 2000). As detailed therein, available data indicate that a properly designed and operated combustion device will reduce emissions by 98 percent if it maintains the specified residence time and temperature. With respect to dense gas systems, the flowrate setpoint calculated for dense gas systems is an indicator of HAP concentration in the gas stream into the control device, and maintaining the flowrate below this value would demonstrate that significant dilution is not occurring. Therefore, the direct final rule amendments modify the introductory text in § 63.2505(b) to reference all of the provisions in § 63.1258(b)(5).

The direct final rule amendments also add language specifying that the alternative standard does not apply to emissions from storage tanks during periods of planned routine maintenance of the control device. All of this language is identical to the planned routine maintenance language in 40 CFR 63.2470 that applies if you comply with the percent reduction emission limit. The exemption was included for compliance with the percent reduction emission limit because the storage tank cannot necessarily be shutdown while the control device is shutdown for maintenance. The same rationale applies for the alternative standard.

Section 63.2505(b)(5)(ii) in the NESHAP specifies requirements for continuous parameter monitoring systems (CPMS) for scrubbers used to comply with the option to reduce

hydrogen halide and halogen HAP emissions after a combustion device by 95 percent. The current language specifies that you must install, operate, and maintain CPMS for the scrubber as specified in 40 CFR 63.2450(k). Since the actual requirements are in 40 CFR 63.994(c), which is modified by § 63.2450(k), the direct final rule amendments revise the provision to reference both sections. Finally, the direct final rule amendments reorder two of the paragraphs in § 63.2505(b) to improve readability.

*Amendments to the Vapor Balancing Alternative for Storage Tanks.* The direct final rule amendments extend vapor balancing to cover liquid transfers from barges to storage tanks. The NESHAP allow vapor balancing from storage tanks to tank trucks and railcars. Since promulgation of the NESHAP, we have determined that barges are used to supply materials to storage tanks in the miscellaneous organic chemical manufacturing industry, and the vapor balancing procedures are as valid for barges as for tank trucks and railcars. The only difference is that the testing procedures to determine vapor-tightness of barges are specified in 40 CFR 61.304(f).

*Amendments to the Definition of Group 1 Wastewater.* The direct final rule amendments add a new paragraph (4) to § 63.2485(c) to specify that effluent from a water scrubber or any other control device that has been used to comply with an emission limit for process vents is Group 1 wastewater, provided the process vent emission stream is Group 1 for HAP listed in Table 8 to 40 CFR part 63, subpart FFFF. This change is needed to ensure that HAP removed from an emission stream are destroyed or otherwise treated so that they are not simply re-emitted. The new language is similar to requirements the NESHAP for Pharmaceuticals Production.

*Amendment to the Definition of Continuous Process Vent.* Section 63.2550(i) of the NESHAP defines "continuous process vent" using the same language as in 40 CFR 63.107 of the Hazardous Organic NESHAP (HON), except that references to other sections in the HON are replaced by references to provisions in 40 CFR part 63, subpart FFFF. Section 63.107(d) of the HON specifies that a gas stream must contain greater than 0.005 weight percent total organic HAP to be a continuous process vent. The direct final rule amendments change "total organic HAP" to "total HAP" for the purposes of subpart FFFF, to clarify the applicability of the emission limits for inorganic HAP

emissions from process vents that are specified in Table 3 to subpart FFFF.

According to the current definition of *Continuous process vent* in the NESHAP, if the only HAP in a gas stream is inorganic HAP, then it would not be a continuous process vent (or any kind of process vent), even if it meets all of the other criteria specified in 40 CFR 63.107. This means it also would not be subject to the emission limits for inorganic HAP in Table 3 to subpart FFFF of part 63. However, in setting the MACT floor for inorganic HAP emissions, we used all available data for gas streams from processing operations, not just data for streams that also had organic HAP. Changing § 63.107(d) for the purposes of subpart FFFF ensures that such streams from continuous operations are subject to the emission limits for inorganic HAP, as we intended. This change also makes the definition for continuous process vent consistent with the definition for batch process vent, which already includes a threshold based on total HAP.

*Clarification of Notification of Compliance Status Reporting Requirements.* The introductory text in 40 CFR 63.9(h)(2)(i) requires the owner or operator of an affected source to submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy. Table 12 to subpart FFFF of part 63 inadvertently stated that this paragraph does not apply to subpart FFFF. This was not our intent. We intended to specify only that the subparagraphs (A) through (G) do not apply because the types of information to include in the report are specified in § 63.2520(d) of subpart FFFF rather than § 63.9(h)(2). Therefore, the direct final rule amendments revise the references in the entry for § 63.9(h)(1)—(6) in Table 12 to subpart FFFF to clarify this point.

*Miscellaneous Technical Corrections.* The direct final rule amendments include several changes to correct references and drafting errors.

### III. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review 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 the Executive Order.

It has been determined that the direct final rule amendments are not a “significant regulatory action” under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action gives a source owner or operator several additional compliance options. Since they are only options, this action will not increase the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0533 (EPA ICR No. 1969.02).

Copies of the information collection request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566–1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able

to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

#### C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today’s direct final rule amendments on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration’s regulations at 13 CFR 121.201; (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 on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The direct final rule amendments add several compliance options granting greater flexibility to small entities subject to the final rule that may result in a more efficient use of resources. We have therefore concluded that today’s final rule will relieve regulatory burden for all affected small entities.

#### D. *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the 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 EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, 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 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 the direct final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The direct final rule amendments provide a source owner or operator with additional options to comply with the standards. Therefore, the direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

#### E. *Executive Order 13132: Federalism*

Executive Order 13132 (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."

The direct final rule amendments do not have federalism implications. They 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. The direct final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the direct final rule amendments from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 9, 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." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. The direct final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

The EPA specifically solicits additional comment on the direct final rule amendments from tribal officials.

#### G. *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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 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. Today's direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the direct final rule amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

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

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

#### I. *National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are cited in the direct final rule amendments. Therefore, EPA is not proposing or adopting any voluntary consensus standards in the direct final rule amendments.

#### J. *Congressional Review Act*

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

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final 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 direct final rule in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on August 30, 2005.

### List of Subjects in 40 CFR Part 63

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

Dated: June 24, 2005.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the 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 FFFF—[Amended]

■ 2. Section 63.2450 is amended as follows:

- a. Revising paragraph (i); and
- b. Removing and reserving paragraph (n).

#### § 63.2450 What are my general requirements for complying with this subpart?

\* \* \* \* \*

(i) *Outlet concentration correction for combustion devices.* When § 63.997(e)(2)(iii)(C) requires you to correct the measured concentration at the outlet of a combustion device to 3 percent oxygen if you add supplemental combustion air, the requirements in either paragraph (i)(1) or (2) of this section apply for the purposes of this subpart.

(1) You must correct the concentration in the gas stream at the outlet of the combustion device to 3 percent oxygen if you add supplemental gases, as defined in § 63.2550, to the vent stream, or;

(2) You must correct the measured concentration for supplemental gases

using Equation 1 of § 63.2460; you may use process knowledge and representative operating data to determine the fraction of the total flow due to supplemental gas.

\* \* \* \* \*

(n) [Reserved]

\* \* \* \* \*

■ 3. Section 63.2460 is amended as follows:

- a. Revising paragraph (b)(4) introductory text;
- b. Adding new paragraph (b)(4)(iii); and
- c. Revising paragraphs (c)(2)(i) and (ii).

#### § 63.2460 What requirements must I meet for batch process vents?

\* \* \* \* \*

(b) \* \* \*

(4) You may elect to designate the batch process vents within a process as Group 1 and not calculate uncontrolled emissions under either of the situations in paragraph (b)(4)(i), (ii), or (iii) of this section.

\* \* \* \* \*

(iii) If you comply with an emission limit using a flare that meets the requirements specified in § 63.987.

(c) \* \* \*

(2) \* \* \*

(i) To demonstrate initial compliance with a percent reduction emission limit in Table 2 to this subpart FFFF, you must compare the sums of the controlled and uncontrolled emissions for the applicable Group 1 batch process vents within the process, and show that the specified reduction is met. This requirement does not apply if you comply with the emission limits of Table 2 to this subpart FFFF by using a flare that meets the requirements of § 63.987.

(ii) When you conduct a performance test or design evaluation for a non-flare control device used to control emissions from batch process vents, you must establish emission profiles and conduct the test under worst-case conditions according to § 63.1257(b)(8) instead of under normal operating conditions as specified in § 63.7(e)(1). The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for batch process vents. For purposes of this subpart FFFF, references in § 63.997(b)(1) to "methods specified in § 63.997(e)" include the methods specified in § 63.1257(b)(8).

\* \* \* \* \*

■ 4. Section 63.2470 is amended by adding new paragraph (e)(4) to read as follows:

#### § 63.2470 What requirements must I meet for storage tanks?

\* \* \* \* \*

(e) \* \* \*

(4) You may comply with the vapor balancing alternative in § 63.1253(f) when your storage tank is filled from a barge. All requirements for tank trucks and railcars specified in § 63.1253(f) also apply to barges, except as specified in § 63.2470(e)(4)(i).

(i) When § 63.1253(f)(2) refers to pressure testing certifications, the requirements in 40 CFR 61.304(f) apply for barges.

(ii) [Reserved]

■ 5. Section 63.2485 is amended by adding paragraph (c)(4) and revising paragraph (d)(2) to read as follows:

#### § 63.2485 What requirements must I meet for wastewater streams and liquid streams within an MCPU?

\* \* \* \* \*

(c) \* \* \*

(4) Effluent from a water scrubber or any other control device that has been used to comply with an emission limit for process vents specified in Table 1 or Table 2 to this subpart FFFF, provided the process vent emission stream is Group 1 for HAP listed in Table 8 to this subpart FFFF.

(d) \* \* \*

(2) When § 63.133(a) refers to Table 10 of subpart G of this part 63, the maximum true vapor pressure in the table shall be limited to the HAP listed in Tables 8 and 9 of this subpart FFFF.

\* \* \* \* \*

■ 6. Section 63.2505 is amended by revising paragraph (b) to read as follows:

#### § 63.2505 How do I comply with the alternative standard?

\* \* \* \* \*

(b) *Compliance requirements.* To demonstrate compliance with paragraph (a) of this section, you must meet the requirements of § 63.1258(b)(5) beginning no later than the initial compliance date specified in § 63.2445, except as specified in paragraphs (b)(1) through (9) of this section.

(1) You must comply with the requirements in § 63.983 and the requirements referenced therein for closed-vent systems.

(2) When § 63.1258(b)(5)(i) refers to §§ 63.1253(d) and 63.1254(c), the requirements in paragraph (a) of this section apply for the purposes of this subpart FFFF.

(3) When § 63.1258(b)(5)(i)(B) refers to "HCl," it means "total hydrogen halide and halogen HAP" for the purposes of this subpart FFFF.

(4) When § 63.1258(b)(5)(ii) refers to § 63.1257(a)(3), it means § 63.2450(j)(5) for the purposes of this subpart FFFF.

(5) You must submit the results of any determination of the target analytes of predominant HAP in the notification of compliance status report.

(6) If you elect to comply with the requirement to reduce hydrogen halide and halogen HAP by greater than or equal to 95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must meet the requirements in paragraphs (b)(6)(i) and (ii) of this section.

(i) Demonstrate initial compliance with the 95 percent reduction by conducting a performance test and setting a site-specific operating limit(s) for the scrubber in accordance with § 63.994 and the requirements referenced therein. You must submit the results of the initial compliance demonstration in the notification of compliance status report.

(ii) Install, operate, and maintain CPMS for the scrubber as specified in §§ 63.994(c) and 63.2450(k), instead of as specified in § 63.1258(b)(5)(i)(C).

(7) If flow to the scrubber could be intermittent, you must install, calibrate, and operate a flow indicator as specified in § 63.2460(c)(7).

(8) Use the operating day as the averaging period for CEMS data and scrubber parameter monitoring data.

(9) The requirements in paragraph (a) of this section do not apply to emissions from storage tanks during periods of planned routine maintenance of the control device that do not exceed 240 hr/yr. You may submit an application to

the Administrator requesting an extension of this time limit to a total of 360 hr/yr in accordance with the procedures specified in § 63.2470(d). You must comply with the recordkeeping and reporting specified in §§ 63.998(d)(2)(ii) and 63.999(c)(4) for periods of planned routine maintenance.

■ 7. Section 63.2520 is amended by revising paragraphs (d)(2)(viii) and (e)(9) to read as follows:

**§ 63.2520 What reports must I submit and when?**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(viii) Identify storage tanks for which you are complying with the vapor balancing alternative in § 63.2470(e).

\* \* \* \* \*

(e) \* \* \*

(9) Applicable records and information for periodic reports as specified in referenced subparts F, G, SS, TT, UU, WW, and GGG of this part 63.

\* \* \* \* \*

■ 8. Section 63.2525 is amended by revising paragraph (a) to read as follows:

**§ 63.2525 What records must I keep?**

\* \* \* \* \*

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts F, G, SS, TT, UU, WW, and GGG of this part 63.

\* \* \* \* \*

■ 9. Section 63.2550 is amended as follows:

■ a. Adding new paragraph (5) to the definition of the term *Continuous process vent*; and

■ b. Revising the definition for the terms *Supplemental gases* and *Wastewater stream*.

**§ 63.2550 What definitions apply to this subpart?**

\* \* \* \* \*

(i) \* \* \*

*Continuous process vent* \* \* \*

(5) The reference to “total organic HAP” in § 63.107(d) means “total HAP” for the purposes of this subpart FFFF.

\* \* \* \* \*

*Supplemental gases* means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental gases. Air required to operate combustion device burner(s) is not considered supplemental gases.

\* \* \* \* \*

*Wastewater stream* means a stream that contains only wastewater as defined in this paragraph (i).

\* \* \* \* \*

■ 10. Table 1 to subpart FFFF is amended by revising entry “1” to read as follows:

TABLE 1 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR CONTINUOUS PROCESS VENTS

For each . . .	For which . . .	Then you must . . .
1. Group 1 continuous process vent.	a. Not applicable .....	i. Reduce emissions of total organic HAP by ≥98 percent by weight or to an outlet concentration ≤20 ppmv as organic HAP or TOC by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions through a closed vent system to a flare; or iii. Use a recovery device to maintain the TRE above 1.9 for an existing source or above 5.0 for a new source.
	* * *	* * *

■ 11. Table 8 to subpart FFFF is amended by revising entry “51” to read as follows:

TABLE 8 TO SUBPART FFFF OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
* * * * *	
51. Tetrachloroethylene (perchloroethylene) .....	127184
* * * * *	

■ 12. Table 9 to subpart FFFF is amended by revising entries “4,” “8,” “9,” and “10” to read as follows:

TABLE 9 TO SUBPART FFFF OF PART 63.—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.
* * * * *	
4. Dimethyl hydrazine (1,1) .....	57147
* * * * *	
8. Ethylene glycol dimethyl ether .....	110714
9. Ethylene glycol monobutyl ether acetate .....	112072
10. Ethylene glycol monomethyl ether acetate .....	110496
* * * * *	

■ 13. Table 12 to subpart FFFF is amended by revising the entry for § 63.9(h)(1)–(6) to read as follows:

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

Citation	Subject	Explanation
* * * * *		
63.9(h)(1)–(6) .....	Notification of Compliance Status.	Yes, except subpart FFFF has no opacity or VE limits, and 63.9(h)(2)(i)(A) through (G) and (ii) do not apply because 63.2520(d) specifies the required contents and due date of the notification of compliance status report.
* * * * *		