

IDAHO ADMINISTRATIVE PROCEDURES ACT (IDAPA) CHAPTER 58, RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO, PREVIOUSLY CODIFIED AT IDAPA CHAPTER 39 (APPENDIX A.3)

58.01.01—Rules for the Control of Air Pollution in Idaho

State citation	Title/subject	State effective date	EPA approval date	Explanations
600	Rules for Control of Open Burning	3/21/03	07/11/05	[Insert page number where the document begins].
601	Fire Permits, Hazardous Materials and Liability	3/21/03	07/11/05	[Insert page number where the document begins].
602	Nonpreemption of Other Jurisdictions	3/21/03	07/11/05	[Insert page number where the document begins].
603	General Restrictions	3/21/03	07/11/05	[Insert page number where the document begins].
606	Categories of Allowable Burning	3/21/03	07/11/05	[Insert page number where the document begins].
607	Recreational and Warming Fires	3/21/03	07/11/05	[Insert page number where the document begins].
608	Weed Control Fires	5/1/94	07/11/05	[Insert page number where the document begins].
609	Training Fires	3/21/03	07/11/05	[Insert page number where the document begins].
610	Industrial Flares	3/21/03	07/11/05	[Insert page number where the document begins].
612	Landfill Disposal Site Fires	3/21/03	07/11/05	[Insert page number where the document begins].
613	Orchard Fires	3/21/03	07/11/05	[Insert page number where the document begins].
615	Dangerous Material Fires	3/21/03	07/11/05	[Insert page number where the document begins].
616	Infectious Waste Burning	3/21/03	07/11/05	[Insert page number where the document begins].
617	Crop Residue Disposal	3/21/03	07/11/05	[Insert page number where the document begins].

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR-2002-0038, FRL-7935-4]

RIN 2060-AK52

**National Emission Standards for Hazardous Air Pollutants: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)**

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

**ACTION:** Final rule; amendment.

**SUMMARY:** We are amending table 1 to subpart B of part 63 to reflect the revised deadlines in a recently amended consent decree. The final rule amendment (and amended consent decree) relates to boilers and hydrochloric acid production furnaces

that burn hazardous waste. We are making the amendment by final rule, without prior proposal, because we view the amendment as a technical correction to an existing regulation.

**DATES:** *Effective Dates:* July 11, 2005.

**ADDRESSES:** *Docket:* The docket for the final rule amendment is Docket ID No. OAR-2002-0038. 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.*, confidential business information (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 HQ EPA Docket Center, Docket ID No. OAR-2002-0038, EPA West Building, Room B-102, 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 EPA Docket Center is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Colyer, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group (C504-05), Research Triangle Park, North Carolina 27711; telephone number (919) 541-5262; fax number (919) 541-5600; e-mail address: [colyer.rick@epa.gov](mailto:colyer.rick@epa.gov).

**SUPPLEMENTARY INFORMATION:** Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for public comment because the change is simply a conforming change to be

consistent with a judicial consent decree date change. Thus, notice and public procedure are unnecessary. EPA

finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

*Regulated Entities.* Categories and entities potentially regulated by this action include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	NAICS <sup>1</sup>	Examples of regulated entities
Industrial/commercial /institutional boilers and process heaters, and hydrochloric acid production furnaces that combust hazardous waste.	327992 .....	Ground or treated mineral and earth manufacturing.
	325 .....	Chemical manufacturers.
	324 .....	Petroleum refiners.
	331 .....	Primary aluminum.
	333 .....	Photographic equipment and supplies.
	488, 561, 562 .....	Sanitary services, N.E.C. <sup>2</sup>
	421 .....	Scrap and waste materials.
	422 .....	Chemical and allied products, N.E.C. <sup>2</sup>
	512, 541, 561, 812 .....	Business services, N.E.C. <sup>2</sup>
	512, 514, 541, 711 .....	Services, N.E.C. <sup>2</sup>
	924 .....	Air, water, and solid waste management.

<sup>1</sup> North American Industry Classification System.

<sup>2</sup> Not elsewhere classified.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Worldwide Web (WWW).* In addition to being available in the docket, electronic copies of today's action will be posted on the Technology Transfer Network's (TTN) policy and guidance information page at <http://www.epa.gov/ttn/caaa>. The TTN provides information and technology exchange in various areas of air pollution control.

*Judicial Review.* Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendment is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by September 9, 2005. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule amendment may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

### I. New Schedule for Part 2 Permit Applications

Section 112(j) of the CAA provides a mechanism for subjecting major sources to emission standards reflecting performance of maximum available control technology (MACT) in the event that EPA fails to issue a MACT standard within the deadlines established in CAA section 112(e). In essence, if EPA fails to issue a timely MACT standard, section 112(j) requires major sources to submit permit applications to the relevant permitting authority. The permitting authority must then establish emission limitations for the source

representing the authority's best estimate of what the MACT standard for the source would have been.

On May 30, 2003 (68 FR 32586), EPA issued final rules establishing dates for submitting CAA section 112(j) Part 2 permit applications, and provisions relating to the substance of those applications should they become due. Today's action deals solely with the issue of applicable dates for submitting applications.

Section 112(j) Part 2 permit application submittal dates are codified in subpart B of 40 CFR part 63 by source category. The dates are 60 days after the scheduled MACT rule completion dates for the respective source category established by the consent decree entered in *Sierra Club v. Johnson*, no. 1:01CV01537 (D.C.D.C.). In adopting these dates, and in particular by which the dates are tied to consent decree deadlines, we considered the possibility of what would happen if the consent decree deadlines were modified. We stated that if the deadline for promulgation of any MACT standards which appear in the consent decree is extended by the District Court in accordance with the provisions of that decree, we will consider at that time whether any corresponding adjustment in the schedule for section 112(j) Part 2 applications set forth in 40 CFR part 63, subpart B, is necessary and appropriate. We added that if we conclude that a change in the schedule for section 112(j) Part 2 applications is warranted, we will consider the use of expedited procedures. (See 68 FR 32594–32595.)

That possibility has now occurred. On March 30, 2005, EPA filed an unopposed motion to modify the consent decree dates for completing MACT standards for two source categories, boilers that burn hazardous

waste and hydrochloric acid production furnaces that burn hazardous waste. The court entered its order modifying the decree on April 1, 2005. EPA is now required to complete the MACT standards for these source categories by September 14, 2005, a 90-day extension of the original date.

The current deadline for submitting CAA section 112(j) Part 2 permit applications is August 13, 2005 (60 days from the original rule completion date in the consent decree). We are amending the section 112(j) Part 2 permit application date so that it now follows the revised consent decree date by 60 days. Consequently, the new date in table 1 to subpart B of part 63 is November 14, 2005. The EPA fully expects to meet the revised consent decree deadline (and so informed the court in our extension motion), so we do not anticipate these permit applications having to be submitted.

We are issuing today's amendment as a final rule without prior proposal. We view this as a technical correction to the original rule, since permit applications are tied to consent decree dates (an issue discussed and fully commented upon in the initial rulemaking). Today's rule thus simply conforms the permit application date to the date in the revised consent decree. Under these circumstances, we believe that opportunity for comment is unnecessary, within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reason, we believe there is good cause within the meaning of 5 U.S.C. 553(d)(3) to make this amendment effective immediately.

### II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a “significant regulatory action” and is, therefore, not subject to review by the Office of Management and Budget. Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995, (15 U.S.C. 272 note) do not apply. This action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing the final rule amendment, EPA has taken necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of the final rule amendment in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The EPA’s compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 30, 2003 **Federal Register** action.

The Congressional Review Act (CRA), (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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 11, 2005. The EPA will submit a report containing this action 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**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### 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: July 5, 2005.

**Jeffrey R. Holmstead,**

*Assistant Administrator for Air and Radiation.*

■ For the reasons stated 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 B—[Amended]

■ 2. Table 1 to subpart B of part 63 is amended by revising the entry dated “8/13/05” to read as follows:

TABLE 1 TO SUBPART B OF PART 63—  
SECTION 112(J) PART 2 APPLICA-  
TION DUE DATES

Due date	MACT standard
11/14/05 ..	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters. <sup>5</sup> Hydrochloric Acid Production. <sup>6</sup>

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 050325082–5165–02; I.D. 031705E]

RIN 0648–AS90

##### Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 10 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which modifies the gear endorsements under the License Limitation Program (LLP) for the scallop fishery. This action is necessary to allow increased participation by LLP license holders in the scallop fisheries off Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Effective on August 10, 2005.

**ADDRESSES:** Copies of Amendment 10 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, and on the Alaska Region, NMFS, website at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Notice of availability for Amendment 10 was