

### National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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.

### Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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**. 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. section 804(2).

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 September 20, 2004. 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, Intergovernmental relations, Volatile organic compounds, Ozone.

Dated: July 8, 2004.

### Norman Niedergang,

Acting Regional Administrator, Region 5.

■ 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 KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (b)(12) to read as follows:

#### § 52.1885 Control strategy: Ozone.

\* \* \* \* \*

(b) \* \* \*  
(12) Approval—On April 19, 2004, Ohio submitted a revision to the ozone maintenance plan for the Cincinnati, Ohio area. The revision consists of allocating a portion of the area's NO<sub>x</sub> safety margin to the transportation conformity motor vehicle emissions budget. The motor vehicle emissions budget for NO<sub>x</sub> for the Cincinnati, Ohio area is now 62.7 tons per day for the year 2010. This approval only changes the NO<sub>x</sub> transportation conformity emission budget for Cincinnati, Ohio.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 61

[OAR-2002-0082; FRL 7789-5]

#### National Emission Standards for Hazardous Air Pollutants for Asbestos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 18, 2003 (68 FR 54790), EPA issued amendments to the national emission standards for hazardous air pollutants (NESHAP) for asbestos under section 112 of the Clean Air Act (CAA). This action corrects typographical errors in Table 1 to the amendments that were promulgated on September 18, 2003.

Section 553 of the Administrative Procedure Act (APA), 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. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the corrections to the final rule do not change the requirements of the final rule. They are minor technical corrections and are not controversial. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (see also the final sentence of section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to this type of rulemaking under the CAA).

DATES: The final rule is effective on August 19, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR 2002-0082. 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 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 EPA Air Docket. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. e.s.t., Monday through Friday, excluding legal holidays. The EPA Air Docket is located at the EPA Docket Center, 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 EPA Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, U.S. EPA, Minerals and Inorganic Chemicals Group (C-504-05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5167, facsimile number (919) 541-5600, electronic mail address: [fairchild.susan@epa.gov](mailto:fairchild.susan@epa.gov).

**SUPPLEMENTARY INFORMATION: Regulated Entities:** Entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
Industrial .....	23	Construction.
Industrial .....	23594	Wrecking and Demolition Contractors.
Industrial .....	562112	Hazardous Waste Collection.
Industrial .....	562211	Hazardous Waste Treatment and Disposal.
Industrial .....	5629	Remediation and Other Waste Management Services.
Industrial .....	56191	Packaging and Labeling Services.
Industrial .....	332992	Small Arms Ammunition Manufacturing.
Industrial .....	33634	Motor Vehicle Systems Manufacturing.
Industrial .....	327	Nonmetallic Mineral Product Manufacturing.
Industrial .....	3279	Other Nonmetallic Mineral Product Manufacturing.
Industrial .....	32791	Abrasive Product Manufacturing.
Industrial .....	32799	All Other Nonmetallic Mineral Product Manufacturing.

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

**I. Background**

On November 20, 1990, the **Federal Register** published EPA's revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61,

subpart M, (55 FR 48406). That rule contained regulatory provisions for the labeling of asbestos waste that cited to regulations then in place from the Occupational Safety and Health Administration (OSHA) for proper labeling of asbestos waste. Subsequent to the publication of that rule, OSHA renumbered the provisions cited in the asbestos NESHAP.

On September 18, 2003, the **Federal Register** published EPA's amendments to the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, (55 FR 48406). Those amendments correctly identify the current OSHA regulatory citations for properly labeling asbestos waste that is managed under the asbestos NESHAP.

However, typographical errors occurred in Table 1: Cross Reference to Other Asbestos Regulations in the **Federal Register** publication of that notice and today's final rule amendments correct the errors.

**II. Final Rule Amendments to the Asbestos NESHAP**

The current OSHA permissible exposure limit (PEL) is 0.1 fibers per cubic centimeter (f/cc). However, Table 1 found at 40 CFR 61.156 erroneously identifies the OSHA PEL as 0.2 f/cc. Today's action corrects Table 1 at 40 CFR 61.156, to reference the OSHA regulation but the NESHAP will not reference the current level of the PEL. Therefore, the section of Table 1 which is being corrected now reads as follows:

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
OSHA .....	29 CFR 1910.1001 .....	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, permissible exposure level.
	29 CFR 1926.1101 .....	Worker protection measures for all construction work involving asbestos, including demolition and renovation-work practices, worker training, bagging of waste, permissible exposure level.

We find for good cause under 5 U.S.C. 553(b)(B) that notice and comment procedures are unnecessary, and we are not soliciting comments on the amendments. The corrections are nonsubstantive in nature and do not affect the requirements for subject persons under the regulations. The regulations will continue to cite to the same OSHA regulations, and merely revise commentary statements accompanying the citations. In addition, the changes are noncontroversial and simply correct two typographical errors. Finally, the final rule amendments raise no new substantive issues beyond those raised in the previous direct final rule

and notice of proposed rulemaking published on September 18, 2003. The EPA received no adverse comments regarding those notices, so an additional period of public comment is unnecessary.

**III. Statutory and Executive Order Reviews**

Under Executive Order 12866, Regulatory Planning and Review (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. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA 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 (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

the Unfunded Mandates Reform Act. The final rule does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999). Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Also, the final rule is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 1985, April 23, 1997) because it is not economically significant. The final rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The final rule does not involve changes to the technical standards related to test methods or monitoring methods; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. Also, the final rule

does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). The EPA has complied with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings) (53 FR 8859, March 15, 1988) by examining the takings implications of the final rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. In issuing the final rule, EPA has taken the 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, Civil Justice Reform (61 FR 4729, February 7, 1996). 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 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 rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 61**

Environmental protection, Asbestos, Air pollution control, Hazardous substances.

Dated: July 13, 2004.

**Robert Brenner,**

*Acting Assistant Administrator, Office of Air and Radiation.*

■ For the reasons stated in the preamble, title 40, chapter I, part 61 is amended as follows:

■ 1. The authority citation for part 61 continues to read as follows:

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

■ 2. Section 61.156 is amended by revising Table 1 to read as follows:

**§ 61.156 Cross-reference to other asbestos regulations.**

\* \* \* \* \*

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
EPA	40 CFR part 763, subpart E	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR part 427	Effluent standards for asbestos manufacturing source categories.
	40 CFR part 763, subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, permissible exposure level.
	29 CFR 1926.1101	Worker protection measures for all construction work involving asbestos, including demolition and renovation-work practices, worker training, bagging of waste, permissible exposure level.
MSHA	30 CFR part 56, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR part 57, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR parts 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 93**

[FRL-7789-6]

RIN 2060-AL73

RIN 2060-AI56

**Transportation Conformity Rule Amendments for the New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes; Correction to the Preamble**

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

**ACTION:** Final rule; correction.

**SUMMARY:** EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or “standards”). The final rule also

addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the final rule contains two errors. This notice is intended to correct these errors. All other preamble and regulatory text printed in the July 1, 2004 final rule is correct.

The Department of Transportation (DOT) is EPA’s federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of these corrections, and DOT concurs.

**DATES:** *Effective Date:* August 2, 2004.

**FOR FURTHER INFORMATION CONTACT:** Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *patulski.meg@epa.gov*, (734) 214-4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *kapichak.rudolph@epa.gov*, (734) 214-4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection

Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *berry.laura@epa.gov*, (734) 214-4858.

**SUPPLEMENTARY INFORMATION:** EPA issued a final rule on July 1, 2004 (69 FR 40004) that amended the transportation conformity rule to include criteria and procedures for the new 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS or “standards”). The final rule also addressed a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund v. EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). The preamble to the July 1, 2004 final rule contains two errors. This notice is intended to correct these errors.

First, the table in Section II. D. What Parts of the Final Rule Apply to Me? (69 FR 40006-7), which lists the issues addressed in the final rule, is incomplete and contains a number of incorrect references to other sections of the rule. The table provides a roadmap for determining whether a specific final rule revision included in the July 1, 2004 rulemaking would apply in your area. The table illustrates which parts of the final rule are relevant for various pollutants and standards.

The following is the corrected table:

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
8-hour ozone .....	Conformity grace period .....	III.A .....	§ 93.102(d)
	Revocation of 1-hour ozone standard .....	III.B .....	Not applicable.
	General implementation of new standards .....	III.C .....	Not applicable.
	Early Action Compacts .....	III.D .....	Not applicable.
	Baseline year test .....	IV.B .....	§ 93.119(b)
	Build/no-build test (marginal classification and subpart 1 areas <sup>1</sup> ).	IV.C .....	§ 93.119(b)(2), § 93.119(g)(2)
	Regional conformity tests (moderate and above classifications).	IV.D .....	§ 93.119(b)(1)
	Regional conformity tests (areas without 1-hour ozone budgets).	V .....	§ 93.109(d)
	Regional conformity tests (areas with 1-hour ozone budgets).	VI .....	§ 93.109(e)
	Federal projects during a lapse .....	XIV .....	§ 93.102(c), § 93.104(d)
	Adequacy process of submitted SIPs .....	XV .....	§ 93.118(e)
		XXIII.G .....	§ 93.118(f)
	Non-federal projects during a lapse .....	XVI .....	§ 93.121(a)
	Consequences of SIP disapprovals .....	XVII .....	§ 93.120(a)(2)
	Safety margins .....	XVIII .....	Deletes § 93.124(b) of previous rule.
	Frequency .....	XIX .....	§ 93.104(c), § 93.104(e)
	Latest planning assumptions .....	XX .....	§ 93.110(a)
	Relying on a previous analysis .....	XXII .....	§ 93.122(g), § 93.104(b), § 93.104(c)
	Definitions .....	XXIII.A .....	§ 93.101
	Insignificance .....	XXIII.B .....	§ 93.109(k), § 93.121(c)
	Transportation plan and modeling requirements (moderate and above classifications). Non-federal projects (for isolated rural areas only).	XXIII.D .....	§ 93.106(b), § 93.122(c)
		XXIII.F .....	§ 93.121(b)(1)
Implementation of budget test .....	XXIII.H .....	§ 93.118(b)	
	XXIII.I .....	§ 93.118(d)	

<sup>1</sup> “Subpart 1 areas” are areas that are designated nonattainment under subpart 1 of part D of title 1

of the Clean Air Act. EPA also referred to these areas as “basic” nonattainment areas in its April 30,

2004 final designations rule for the 8-hour ozone standard (69 FR 23862).