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

2. In § 81.339, the table for ''Pennsylvania—Carbon Monoxide'' is amended by revising the entry for the Pittsburgh Area to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * *	*	*	*	
Pittsburgh Area:				
Allegheny County (part) high traffic density areas within the Central Business District and certain other high traffic density areas.	1/13/02	Attainment.		
* * * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–28495 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–7405–6]

RIN 2060–AJ87

National Emission Standard Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for benzene waste operations. The amendments add an exemption for organic vapors routed to the fuel gas system and a new compliance option for tanks, and clarify the standards for containers.

We are publishing the direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. 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 adverse comments are filed.

DATES: The amendments are effective on February 10, 2003 without further notice, unless significant, adverse comments are received by December 12, 2002, or by February 18, 2003 if a public hearing is requested. See the proposed rule in this issue of the **Federal Register** for information on the hearing. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A–2001–23, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A–2001–23, Room B–108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request that a separate copy of each public comment be sent to the EPA contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). *Docket.* Docket No. A–2001–23 contains supporting information used in developing the amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B–108, 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. Robert B. Lucas, Waste and Chemical Process Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Caroline 27711, telephone number (919) 541–0884, electronic mail address, lucas.bob@epa.gov.

SUPPLEMENTARY INFORMATION: For information concerning applicability and rule determinations, contact the appropriate regional representative:

U.S. EPA New England, Director, Air Compliance Programs, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023. *Phone:* (617) 918–1656, *Fax:* (617) 918–1112.

U.S. EPA—Region II, Air Compliance Branch, 290 Broadway, New York, NY 10007–1866, *Phone:* (212) 637–3000, *Fax:* (212) 637–3526.

U.S. EPA—Region III, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029, *Phone:* (215) 814–3438, *Fax:* (215) 814–2134, Region III Office Web site: *www.epa.gov/reg3artd/hazpollut/hazairpol.htm.*

U.S. EPA—Region IV, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, *Phone:* (404) 562–9105, *Fax:* (404) 562–9095.

U.S. EPA—Region V, Air Enforcement and Compliance Assurance Branch (AE17J), 77 West Jackson Boulevard, Chicago, IL 60604–3590, *Phone:* (312) 353–2088, *Fax:* (312) 353–8289.

U.S. EPA—Region VI, Chief, Toxics Enforcement Section (∧EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733, *Phone:* (214) 665–7224, *Fax:* (214) 665–2146, Region VI Office Web site: www.epa.gov/region6.

U.S. EPA Region VII, Bill Peterson, 726 Minnesota Avenue, Kansas City, KS 66101, *Phone:* (913) 551–7881, *Fax:* (913) 551–7467.

U.S. EPA—Region VIII, MACT Enforcement, 999 18th Street, Suite 500, Denver, Colorado 80202, *Phone:* (303) 312–6312, Fax: (303) 312–6409.

U.S. EPA—Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105, *Phone:* (415) 744–1219, *Fax:* (415) 744–1076.

U.S. EPA—Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, *Phone:* (206) 553–4273, *Fax:* (206) 553–0110.

Comments. All public comments will be addressed in a subsequent final rule based on the proposed amendments. If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** before the effective date of the amendments. If an adverse comment

applies to a specific amendment, and that provision can be addressed separately from the remainder of the direct final rule, we will withdraw only that provision on which we received adverse comments. In the Proposed Rules section of today's **Federal Register**, we are publishing a separate action that will serve as the proposal for any provisions in the direct final rule if we receive adverse comments. If all or part of the direct final rule is withdrawn, all public comments received will be addressed in a subsequent final rule based on the proposal. We will not institute a second comment period on the subsequent final rule. If you are interested in commenting, you must do so at this time.

Comments and data may be submitted by electronic mail (e-mail) to ''*a-and-r-docket@epa.gov*''. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–2001–23. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: *Attention:* Mr. Robert Lucas, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available, without further notice, to the public.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the amendments. The docket is a dynamic file because information 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 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 the direct final rule 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the direct final rule 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

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

Category	SIC code	NAIC	Examples of regulated entities
Industry	2800's 2911 3312 4925 4953 9511	32512–325182 32411 331111 22121 562211 324110	Chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities that manage waste generated by these industries.
Federal government			Not affected.
State/local/tribal government			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the direct final rule. To determine whether your facility is regulated by the direct final rule, you should examine the applicability criteria in 40 CFR 61.340 of the NESHAP for benzene waste operations. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by January 13, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, section 307(b)(2) of the CAA, the requirements that are the subject of the direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce the requirements.

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

I. Background
II. Why Are We Publishing the Amendments as a Direct Final Rule?
III. How Are We Changing the Applicability of the Final Rule?
IV. What Is the New Compliance Option for Tanks?
V. How Are We Clarifying the Standards for Containers?
VI. How Do I Demonstrate Initial and Continuous Compliance?
VII. What Are the Administrative Requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

The NESHAP for benzene waste operations (40 CFR part 61, subpart FF) applies to equipment and processes at certain chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities that treat, store, or dispose of waste generated by those industries. In today's direct final rule, we are adding a new compliance option for tanks adopted from similar standards established under the Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subpart CC). The change was first suggested by a company subject to both the benzene waste NESHAP and the RCRA subpart CC final rules.

The new compliance option allows tanks to be located inside a permanent total enclosure that routes organic vapors through a closed-vent system to an enclosed combustion control device. The requirements for the permanent total enclosure are the same as the Tank Level 2 control requirements in 40 CFR 264.1084(i) and 40 CFR 265.1085(i) of the RCRA final rules. The closed-vent system and control device must meet the design and operational standards in the existing NESHAP. Adding that option reduces regulatory burden by allowing companies to use one set of equipment to comply with both waste final rules.

We are also amending the benzene waste NESHAP requirements for containers to clarify when covers are or are not required. That change is being made to improve understanding of the existing requirements within the regulated community. The amendment specifies requirements for use of a permanent total enclosure with a closed-vent system that routes organic vapors to a control device; the requirements for a permanent total enclosure are the same as for tanks.

In the third change, we are amending the benzene waste NESHAP in response to a request from a petroleum refinery subject to the benzene waste NESHAP. That facility has requested that the benzene waste NESHAP exempt organic vapors from a waste management unit, treatment process, or wastewater treatment system that are routed to a fuel gas system. That exemption is already included in the air standards for petroleum refineries in 40 CFR part 63, subpart CC. With that change, any facility subject to the benzene waste NESHAP can save energy and costs by routing gases to the fuel gas system to recover the heating value of the waste stream. The same definition of ''fuel gas system'' in the petroleum refinery final rule is added to the benzene waste NESHAP for consistency.

II. Why Are We Publishing the Amendments as a Direct Final Rule?

We are publishing the amendments without prior proposal because we view the changes as noncontroversial and anticipate no adverse comment. The amendments to the benzene waste NESHAP increase flexibility by adding new compliance options and clarifying existing requirements. The amendments do not alter the stringency of the benzene waste NESHAP, have no adverse health or environmental impacts, and will reduce costs. For those reasons, we view the amendments as noncontroversial, anticipate no adverse comments, and are publishing the amendments as a direct final rule.

The nature of the changes contained in the direct final rule are such that it will benefit both industry and the States for the changes to become effective sooner, rather than later.

III. How Are We Changing the Applicability of the Final Rule?

The existing NESHAP for benzene waste operations require that organic vapors be routed to a control device that meets the applicable design and operation requirements in 40 CFR 61.349. Provisions are included for enclosed combustion devices (*e.g.*, vapor incinerator, boiler, or process heater) and vapor recovery systems (carbon canister, condenser).

We are adding an exemption to 40 CFR 61.340 of the NESHAP for gaseous waste streams from a waste management unit, treatment process, or wastewater treatment system that are routed to a fuel gas system. With the exemption, a facility can route the waste gas stream to the fuel gas system to reuse the gases as fuel for heaters, furnaces, boilers, incinerators, gas turbines, or other combustion devices. Because the gas stream goes into the general fuel gas system where it mixes with other fuel gases, it is not possible to specify which particular combustion device ultimately receives the waste stream gases. For that reason, the exemption allows the use of any control device (enclosed combustion unit) connected to the fuel gas system, and does not require the owner or operator to specify a specific control device. A similar exemption is included in the existing NESHAP for petroleum refineries (40 CFR part 63, subpart CC).

Including the exemption eliminates conflicting regulatory requirements, reduces energy needs, and saves costs. The exemption already contained in the petroleum refinery NESHAP implements the current technology-based requirements of section 112 of the CAA. We have determined that the exemption also satisfies the risk-based requirements of the benzene waste NESHAP since no increase in air emissions (or associated health risk) will result. Air emissions are not increased because the gases are ultimately burned in enclosed combustion devices within the facility that typically have high combustion efficiencies for organic HAP. Additional information is available in Docket A–2001–23.

IV. What Is The New Compliance Option for Tanks?

Currently, 40 CFR 63.343 of the benzene waste NESHAP requires a fixed-roof and closed-vent system that routes all organic vapors from the tank to a control device. In certain cases, only a fixed-roof is required for tanks with low-volatility waste.

The new control option allows tanks to be located inside a permanent total enclosure with a closed-vent system that routes organic vapors to an enclosed combustion control device. The requirements for that option are the same as Tank Level 2 control requirements in 40 CFR 264.1084(i) and 40 CFR 265.1085(i) of the subpart CC rules and include:

- Locating the tank inside an enclosure designed and operated to meet the criteria for a permanent total enclosure in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, appendix B. Provisions are included for permanent or temporary openings in the enclosure to allow for access and other needs.
- Routing emissions from the total enclosure through a closed-vent system to an enclosed combustion control device. The combustion control device must be designed and operated to meet the standards for a vapor incinerator, boiler, or process heater in 40 CFR 63.349(a)(2)(i) of subpart FF.

The Tank Level 2 requirements implement RCRA provisions (42 U.S.C. 6924(n)) which require health-based rules sufficient to protect human health and the environment from air emissions from hazardous waste. We have determined that those provisions also satisfy the statutory risk-based requirements of the benzene waste NESHAP.

The Tank Level 2 requirements result in an overall HAP control efficiency equivalent to the existing control requirements in the benzene waste NESHAP. That is because the overall

control efficiency for a fixed roof tank is determined by the efficiency of the control device. The overall control efficiency for a control system with a permanent total enclosure is the product of the enclosure capture efficiency times the efficiency of the control device. The capture efficiency of a permanent total enclosure that meets the Procedure T criteria in 40 CFR 52.741, appendix B is considered to be 100 percent. The enclosed combustion control devices required by the new option are the same combustion control devices required by the existing benzene waste NESHAP (vapor incinerator, boiler, or process heater). The option also requires that the control devices be designed and operated according to the benzene waste NESHAP requirements. Thus, the overall control efficiency achieved under the new option is equivalent to the control efficiency achieved under the existing benzene waste NESHAP. Additional information on our determination is available in Docket A–2001–23.

The subpart CC rules allow for safety devices to be added to enclosures and for venting emissions through the safety devices in the event of an emergency. Today's amendments contain the same, needed provisions, along with a definition of ''safety device.'' Briefly, a safety device is a pressure relief valve, frangible disc, fusible plug, or other type of device that opens only to prevent damage during an unplanned, accidental, or emergency event by venting gases to the atmosphere. Safety devices may be put on any enclosure or control device as needed.

V. How Are We Clarifying the Standards for Containers?

We are revising the language in 40 CFR 61.345 of the benzene waste NESHAP to clarify when a total enclosure is and is not required and what requirements must be met for total enclosures. There are two ways to control emissions from containers: (1) Vent emissions from a covered or closed container directly to a control device, or (2) vent the container inside a permanent total enclosure with a closed-vent system that routes organic vapors to a control device. To further clarify the requirements, we have added the same provisions for permanent total enclosures as described for tanks. Those requirements are also the same as the Container Level 3 controls in 40 CFR 264.1086(e) and 40 CFR 265.1087(e) of the RCRA air rules. Like tanks, we have determined that the HAP control efficiency is equivalent to that achieved by a closed container vented to a control device and that the provisions satisfy the statutory risk-based requirements for that final rule. (See Docket A–2001–23.)

VI. How Do I Demonstrate Initial and Continuous Compliance?

The requirements for demonstrating initial and continuous compliance with the requirements for tanks or containers in a total enclosure are the same as those required in the RCRA rules for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subpart CC). When the enclosure is first installed, you must verify that the enclosure meets the criteria for a permanent total enclosure according to the requirements in section 5 of ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, appendix B. To demonstrate continuous compliance, you must repeat the verification procedure annually and keep records of the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria in Procedure T, in addition to records required for a closed-vent system and control device. A new paragraph is added to 40 CFR 61.356 of the benzene waste NESHAP to differentiate the recordkeeping requirements for total enclosures from those associated with the inspection requirements for covers, closed-vent systems, and control devices.

To eliminate regulatory overlap, we have added a provision stating that demonstration of compliance with the RCRA subpart CC rules also demonstrates compliance with the requirements of the benzene waste NESHAP. That means that no demonstration of initial compliance is required by the NESHAP for a tank located inside a total enclosure if the facility has demonstrated initial compliance with the Tank Level 2 control requirements in 40 CFR 264.1084(i) or 40 CFR 265.1085(i). That provision also applies to a container located inside a total enclosure if the facility has demonstrated initial compliance with the Container Level 3 control requirements in 40 CFR 264.1086(e) or 40 CFR 265.1087(e). The same is true for demonstrating continuous compliance by conducting annual verifications and keeping records of the information required by 40 CFR 264.1089(d) or 40 CFR 264.1090(d). The NESHAP require that records used for RCRA compliance purposes be made available for inspection upon request.

VII. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the EPA 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 a ''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.

Pursuant to the terms of Executive Order 12866, we have determined that today's amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. The revisions are primarily technical actions with no significant policy issues, are based on established criteria included in other EPA rules, and employ accepted scientific methods. Amending the benzene waste NESHAP increases flexibility, improves understanding of the existing requirements, makes the benzene waste NESHAP consistent with the RCRA air rules for waste management, reduce costs, and have no environmental impacts. Consequently, the 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.''

The direct final rule does not have federalism implications. It 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. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the direct final rule.

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.''

The 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 facilities subject to the benzene waste NESHAP. Thus, Executive Order 13175 does not apply to the direct final rule 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The direct final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The EPA interprets Executive Order 13045 as applying only to 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. The NESHAP for benzene waste operations is based on protection of the public health with an ample margin of safety. However, the amendments to the benzene waste NESHAP have no effect on the level of emissions from benzene waste operations or associated risk and are not subject to Executive Order 13045.

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

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

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 the aggregate, or to 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 the 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 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 the amendments do not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. No costs are attributable to the amendments. In addition, the direct final rule does not significantly or uniquely impact small governments because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule.

G. 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 RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code; (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.

The EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA also determined that the amendments will not impose a significant economic impact on a substantial number of small

entities. The amendments impose no additional requirements on new or existing regulated facilities. In addition, by allowing the use of existing equipment under new alternative compliance options, these amendments decrease the compliance costs and reduce capital and operating costs for a few facilities. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The OMB approved the information collection requirements in the 1990 NESHAP for benzene waste operations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number No. 2060–0183. A copy of the information collection request (ICR) document for the 1990 NESHAP for benzene waste operations (ICR No. 1541.06) may be obtained from Susan Auby by mail at U.S EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672.

The amendments require facilities using total enclosures for tanks or containers to verify the integrity of the enclosure initially, when first installed, and annually thereafter. The amendments also require facilities to keep records of the most recent set of calculations and measurements performed to verify that the total enclosure meets the specified criteria. The requirements are identical to other EPA air rules for waste management in 40 CFR parts 264 and 265, subpart CC. A facility that is already meeting the subpart CC requirements is not required to make duplicate verifications or keep duplicate records, but must make the subpart CC records available for inspection upon request. The recordkeeping requirements, which are needed to determine compliance, are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). The information collection requirements in the direct final rule will have no net impact on the information collection burden estimates included in the ICR for the 1990 benzene waste NESHAP, because the only facility with a total enclosure is already conducting annual verifications and keeping the prescribed records. Consequently, the ICR has not been revised.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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 (March 7, 1996)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, business practices, etc.) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

The direct final rule requires the use of ''Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, appendix B. That procedure uses established and commonly-accepted techniques and calculations to confirm the efficiency of the enclosure. The procedure is required for all State implementation plans and in other EPA rules. We have not been able to identify any applicable VCS. Accordingly, the NTTAA requirement does not apply to the direct final rule. Nevertheless, as provided by the NESHAP General Provisions in 40 CFR part 61, subpart A, any State or facility may apply to EPA for permission to use an alternative method.

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 will be effective on February 10, 2002.

List of Subjects in 40 CFR Part 61

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

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

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

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

Subpart FF—[AMENDED]

2. Section 61.340 is amended by adding paragraph (d) to read as follows:

§ 61.340 Applicability.

* * * * *

(d) At each facility identified in paragraph (a) or (b) of this section, any gaseous stream from a waste management unit, treatment process, or wastewater treatment system routed to a fuel gas system, as defined in § 61.341, is exempt from this subpart. No testing, monitoring, recordkeeping, or reporting is required under this subpart for any gaseous stream from a waste management unit, treatment process, or wastewater treatment unit routed to a fuel gas system.

3. Section 61.341 is amended by adding new definitions in alphabetical order for the terms ''Fuel gas system'' and ''Safety device'' to read as follows:

§ 61.341 Definitions.

* * * * *

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous streams generated by facility operations, may blend them with sources of gas, if available, and

transports the blended gaseous fuel at suitable pressures for use as fuel in heaters, furnaces, boilers, incinerators, gas turbines, and other combustion devices located within or outside the facility. The fuel is piped directly to each individual combustion device, and the system typically operates at pressures over atmospheric.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

* * * * *

4. Section 61.343 is amended by:

a. Revising paragraph (a) introductory text;

b. Adding paragraph (a)(2); and

c. Adding paragraph (e).

The revision and additions read as follows:

§ 61.343 Standards: Tanks.

(a) Except as provided in paragraph (b) of this section and in § 61.351, the owner or operator must meet the standards in paragraph (a)(1) or (2) of this section for each tank in which the waste stream is placed in accordance with § 61.342 (c)(1)(ii). The standards in this section apply to the treatment and storage of the waste stream in a tank, including dewatering.

(1) * * *

(2) The owner or operator must install, operate, and maintain an enclosure and closed-vent system that routes all organic vapors vented from the tank, located inside the enclosure, to an enclosed combustion control device in accordance with the requirements specified in paragraph (e) of this section.

* * * * *

(e) Each owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device must meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) The tank must be located inside a total enclosure. The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure as specified in section 5.0 of Procedure T initially when the enclosure is first installed and, thereafter, annually. A facility that has conducted an initial compliance demonstration and that performs annual compliance demonstrations in accordance with the requirements for Tank Level 2 control requirements 40 CFR 264.1084(i) or 40 CFR 265(i) is not required to make repeat demonstrations of initial and continuous compliance for the purposes of this subpart.

(2) The enclosure must be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 61.349.

(3) Safety devices, as defined in this subpart, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (e)(1) and (2) of this section.

(4) The closed-vent system must be designed and operated in accordance with the requirements of § 61.349.

5. Section 61.345 is amended by revising paragraph (a)(3) to read as follows:

§ 61.345 Standards: containers.

(a) * * *

(3) Treatment of a waste in a container, including aeration, thermal or other treatment, must be performed by the owner or operator in a manner such that while the waste is being treated the container meets the standards specified in paragraphs (a)(3)(i) through (iii) of this section, except for covers and closed-vent systems that meet the requirements in paragraph (a)(4) of this section.

(i) The owner or operator must either:

(A) Vent the container inside a total enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (a)(3)(ii)(A) and (B) of this section; or

(B) Vent the covered or closed container directly through a closed-vent system to a control device in accordance with the requirements of paragraphs (a)(3)(ii)(B) and (C) of this section.

(ii) The owner or operator must meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(A) The total enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in section 5 of the ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure as specified in section 5.0 of ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually. A facility that has conducted an initial compliance demonstration and that performs annual compliance demonstrations in accordance with the Container Level 3 control requirements in 40 CFR 264.1086(e)(2)(i) or 40 CFR 265.1086(e)(2)(i) is not required to make repeat demonstrations of initial and continuous compliance for the purposes of this subpart.

(B) The closed-vent system and control device must be designed and operated in accordance with the requirements of § 61.349.

(C) For a container cover, the cover and all openings (*e.g.*, doors, hatches) must be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and

thereafter at least once per year by the methods specified in § 61.355(h).

(iii) Safety devices, as defined in this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

* * * * *

6. Section 61.356 is amended by adding paragraph (n) to read as follows:

§ 61.356 Recordkeeping requirements.

* * * * *

(n) Each owner or operator using a total enclosure to comply with control requirements for tanks in § 61.343 or the control requirements for containers in § 61.345 must keep the records required in paragraphs (n)(1) and (2) of this section. Owners or operators may use records as required in 40 CFR 264.1089(b)(2)(iv) or 40 CFR 265.1090(b)(2)(iv) for a tank or as required in 40 CFR 264.1089(d)(1) or 40 CFR 265.1090(d)(1) for a container to meet the recordkeeping requirement in paragraph (n)(1) of this section. The owner or operator must make the records of each verification of a total enclosure available for inspection upon request.

(1) Records of the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, appendix B;

(2) Records required for a closed-vent system and control device according to the requirements in paragraphs (d) (f), and (j) of this section.

* * * * *

[FR Doc. 02–28499 Filed 11–8–02; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1808 and 1851

RIN 2700–AC33

Authorization of Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) by requiring an internal Agency clearance before authorizing contractors' use of interagency fleet management system (IFMS) vehicles. This final rule also makes editorial changes to conform section numbering as a result of Federal Acquisition Circular (FAC) 01–09.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-0460; e-mail: *patrick.flynn@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 13149, ''Greening the Government through Federal Fleet and Transportation Efficiency'' requires, *inter alia,* that each agency operating 20 or more motor vehicles within the United States reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels. In order to achieve this goal, more centralized management and reporting is required. This change requires concurrence by installation transportation officers prior to contracting officer authorization of contractor requests to obtain IFMS vehicles. This change will assure transportation management participation in the contract authorization process. Additionally, this final rule revises section designations within part 1808 as a result of changes made by FAC 01–09.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule in not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS parts 1808 and 1851 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1808 and 1851

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1808 and 1851 are amended as follows:

1. The authority citation for 48 CFR parts 1808 and 1851 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 1808.002 is redesignated as section 1808.003.

3. Section 1808.002–70 is redesignated as section 1808.003–70.

4. Section 1808.002–71 is redesignated as section 1808.003–71.

5. Section 1808.002–72 is redesingated as section 1808.003–72.

6. Section 1808.002–75 is redesignated as section 1808.003–73.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

7. Add subpart 1851.2 to read as follows:

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.202 Authorization.

(a) The contracting officer shall obtain concurrence from the Transportation Officer before authorizing a cost-reimbursement contractor to obtain interagency fleet management system (IFMS) vehicles or related services.

[FR Doc. 02–28541 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1845

RIN 2700–AC33

Government Property—Instructions for Preparing NASA Form 1018

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to provide policies and procedures for proper reporting of heritage assets as part of contractor annual reports of NASA property in its custody, and to clarify other property