

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2006-0510; FRL-]

RIN 2060-A046

**Amendments to National Emission Standards for Hazardous Air
Pollutants for Primary Copper Smelting and Secondary Copper
Smelting Area Sources**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the national emission standards for primary copper smelting area sources and secondary copper smelting area sources published on January 23, 2007.

The amendments to the national emission standards for primary copper smelting area sources clarify when plants must exhaust gases to a control device and what control devices may be used for this requirement; numbering errors are also corrected. The amendments to the national emission standards for secondary copper smelting area sources clarify the date which defines a new copper smelter and correct a cross-referencing error.

DATES: Written comments must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0510 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-2825; fax number: (919) 541-3207; e-mail address: nizich.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

The information presented in this document is organized as follows:

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 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
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 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. Why is EPA issuing the proposed rule?

In the "Rules and Regulations" section of this **Federal Register**, we are issuing these corrections as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. On January 23, 2007 (72 FR 2944; 72 FR 2952), we issued the national emission standards for hazardous air pollutants (NESHAP) for primary copper smelting area sources (40 CFR part 63, subpart EEEEEEE) and the NESHAP for secondary copper smelting area sources (40 CFR part 63, subpart FFFFFFF). This document proposes to make certain technical and editorial corrections to both rules. We have published a direct final rule correcting the area source NESHAP in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial

action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on the proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For information about commenting on the rule, see the **ADDRESSES** section of this document.

II. Does this action apply to me?

Categories and entities potentially regulated by the proposed rule include:

Category	NAICS code ¹	Examples of regulated entities
Industry...	331411	Primary copper smelting area source facilities that produce copper from copper sulfide ore concentrates using pyrometallurgical techniques.
	331423	Secondary copper smelting area source facilities that process copper scrap in a blast furnace and converter or use another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11146 of subpart EEEEEEE (NESHAP for Primary Copper Smelting Area Sources) or 40 CFR 63.11153 of subpart FFFFFFF (NESHAP for Secondary Copper Smelting Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

III. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address:

<http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. EPA is proposing this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources. These proposed corrections do not include any information collection requirement.

Burden means the total time, effort, or financial resources

expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (less than 1,000 employees for primary copper smelting and less than 750 employees for secondary copper smelting); (2) a government 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 that is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small businesses in these area source categories will not incur any adverse impacts because EPA is taking this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources, and these corrections would not create any new requirements or burdens. No costs are associated with the proposed corrections to the two NESHAP. We continue to be interested in the potential impacts of the proposed corrections on small entities and welcome comments on issues

related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal

governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, 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.

EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA is taking this action to make certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. No costs are associated with these proposed corrections. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small governments. The technical and editorial corrections proposed in this action contain no requirements that apply to such governments, impose no obligations upon them, and would not result in any expenditures by them or any disproportionate impacts on them. Therefore, the proposed rule

is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed rule does not have federalism implications. The proposed rule makes certain technical and editorial corrections to the NESHAP for primary and secondary smelting area sources. These proposed corrections do not impose requirements on State or local governments. They have no direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and

local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed rule makes certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. These proposed corrections do not impose requirements on tribal governments. They also have no 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. Thus, Executive Order 13175 does not apply to the proposed rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2)

concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because the NESHAP for the primary and secondary copper smelting area sources are based on technology performance and not on health or safety risks.

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

The proposed 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.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer

Advancement Act of 1995 (NTTAA), Public Law No. 104-113, §12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12848 (58 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical and editorial corrections in the proposed rule do not change the level of control required by the NESHAP.

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List of Subjects in 40 CFR Part 63

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

Dated:

Stephen L. Johnson,
Administrator.