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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5512-6]

National Emission Standards for Hazardous Air Pollutants for:
Chromium Emissions From Hard and Decorative Chromium
Electroplating and Chromium Anodizing Tanks; Ethylene Oxide
Commercial Sterilization and Fumigation Operations;
Perchloroethylene Dry Cleaning Facilities; and Secondary Lead
Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates final action to amend certain sections of the following promulgated standards: ``National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Final Rule'' (subpart N); ``National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations'' (subpart O); ``National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities'' (subpart M); and ``National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting'' (subpart X). Today's action amends the Final Rules' requirement that nonmajor sources (emitting or having the potential to emit less than 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants) obtain title V operating permits. The action being taken today will substantially reduce the unnecessary and undue regulatory burden for States and local agencies, the EPA Regional Offices, and the industry during a time when all available resources are necessary for the initial implementation of the title V permit program for major sources. Sources are still required to meet all applicable emission control requirements established by the

respective maximum achievable control technology (MACT) standards. The only change from proposal to promulgation is that the 5-year deferral option, as with the other rules, is also being provided for nonmajor sources in the secondary lead smelters (subpart X) source category.

DATES: Effective Date: June 3, 1996.

Judicial Review: Under section 307(b)(1) of the Act , judicial review of national emission standards for hazardous air pollutants (NESHAP) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: Docket No. A-88-02, containing the supporting information for the original subpart N NESHAP and this action, Docket No. A-88-03, containing the supporting information for the original subpart O NESHAP, Docket No. A-88-11, containing the supporting information for the original subpart M NESHAP, and Docket No. A-92-43, containing the supporting information for the original subpart X NESHAP, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA Air and Radiation Docket and Information Center, Waterside Mall, room M-1500, first floor, 401 M Street S.W., Washington, D.C. 20460, or by calling (202) 260-7548. These dockets also contain information considered by the EPA in developing this final rule. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5420.

SUPPLEMENTARY INFORMATION:

I. Background

The proposal notice was published in the Federal Register on December 13, 1995 (60 FR 64002). No public hearing was requested. Seventeen letters commenting on the proposed rule were received during the public comment period.

II. Summary

A. Summary of Changes Since Proposal

The proposed rule offered title V permitting authorities the option to defer permitting of nonmajor sources in the following source categories: chromium electroplating and chromium anodizing tanks; ethylene oxide commercial sterilization and fumigation operations; and perchloroethylene dry cleaning facilities. The rule proposed permitting nonmajor secondary lead smelters on schedule. In response to public comments received and additional analyses performed by the EPA, on change has been made to the rule since proposal. The permitting authorities will be allowed the option to defer the nonmajor sources in the secondary lead smelters source category for 5 years from title V permit requirements similar to the option for nonmajor sources in the other source categories described in the proposal. Comments were also received on possible additional permanent exemptions for any of the source categories for which temporary exemptions were being considered. Although a majority of the comments supported permanent exemptions for these nonmajor sources, the EPA has decided not to grant permanent exemptions to any additional source categories at this time. However, the EPA will make a decision regarding additional permanent exemptions by the time the temporary exemptions expire. During the permit deferral period, the EPA will continue to evaluate the State/local agency implementation and enforcement of the standards for nonmajor sources outside of a title V permit, the likely benefit of permitting such sources, and the costs and other burdens on such sources associated with obtaining a title V permit.

B. Significant Comments and Responses

Comments on the proposed rule were received from the industry and State and local regulatory agencies. Except for one State agency, all commenters concurred with the EPA option to allow states to defer title V permit requirements for nonmajor sources. The representative for the State of Florida disagreed with this recommendation by contending that permitting the subject nonmajor sources through the use of title V general permits would not constitute an undue regulatory burden for a permitting agency, nor would such a mechanism be considered exceptionally onerous for small

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businesses covered by the section 112 standards. The State of Florida maintains that a general permit is the most efficient and cost-effective process by which States can implement

emission standard requirements.

The commenter articulated that the deferral of permitting requirements for area sources is problematic for the following reasons. First, the deferral will create unnecessary confusion for affected sources that will still be subject to the NESHAP requirements. Second, permits are needed to practically verify emission limitations and work practices to which a source is subject. Third, the commenter questions whether the enforcement of NESHAP requirements can be accomplished by means other than a permit. The commenters experience has been that small businesses support a general permit that states the applicable NESHAP requirements. Lastly, the commenter believes that the lack of a permit requirement will result in unequal enforcement of emission limitations by individual States or local air pollution control agencies.

The EPA believes that the rationale described in the proposal for the temporary exemption option, as well as supportive public comments, strongly support the deferral of permitting for nonmajor sources; therefore, the EPA has not made any changes to this option. Nevertheless, the issues which the above commenter raises will be examined during the process of determining whether to permit or allow the exemption of nonmajor sources at the conclusion of the 5 year deferral. It should be noted that today's action does not preclude any State/local permitting authority from proceeding to permit the nonmajor sources discussed in this notice at their discretion during the deferral period.

Two commenters specifically questioned the EPA's justification in not allowing the deferral of nonmajor secondary lead smelters. The EPA had proposed that requiring nonmajor secondary lead smelters to obtain Part 70 permits without delay would not be impracticable or infeasible for the State or local permitting authorities involved and would not unnecessarily burden these companies since, in contrast to the hundreds or thousands of sources in the four other source categories, there are only a few secondary lead smelters which are nonmajor sources. The commenters contend that requiring nonmajor secondary lead smelters to obtain a title V permit is also unnecessary and could cause undue burden both to the industry as well as to the State agencies and will not enhance any environmental benefits.

Upon consideration of these comments and further evaluation, the EPA believes that the relatively few number of sources in a category is not an important distinction, and that States should, therefore, also be allowed to temporarily exempt nonmajor secondary lead smelters from permitting requirements, along with sources in the other source categories. This change from proposal is consistent with the EPA's decision for

deferral for the other area source categories. As explained previously, comments were received on the other nonmajor source categories requesting an option for permanent permit exemptions. The EPA will continue to evaluate factors related to this issue and make a decision regarding permanent exemptions by the time the temporary exemptions expire. This ongoing evaluation reinforced the advisability of also providing the opportunity for the deferral of permits to secondary lead smelters, so that the permit requirements for all nonmajor sources can be addressed as a package. These nonmajor sources are still required to comply with the requirements of the promulgated standard for secondary lead smelters regardless of whether they will be permitted in the near term. While the EPA disagrees with the assertion that permitting under title V does not yield an environmental benefit, the EPA does agree that to require the immediate permitting of nonmajor secondary lead smelters is unnecessarily burdensome during the initial years of the title V program.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) were submitted to and approved by the Office of Management and Budget (OMB). Today's changes to the NESHAP would not increase the information collection burden estimates made previously. In fact, they are expected to reduce the required paperwork by providing the opportunity for delays for some sources and exemptions for others from requirements to obtain a title V permit.

B. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements,

grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it does not consider this to be a ``significant regulatory action'' within the meaning of the Executive Order. Therefore, the EPA did not submit this action to the OMB for review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of regulations on small entities. A regulatory flexibility analysis (RFA) is required if preliminary analysis indicates ``a significant economic impact on a substantial number of small entities''. As explained earlier in this rule, these amendments would reduce the impacts on small entities (specifically small businesses) by allowing States to delay some and exempt others from the requirement to obtain a title V permit.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Subtitle E of SBREFA establishes opportunity for Congress to review and potentially disapprove nonmajor rules promulgated on or after March 29, 1996 or major rules promulgated after March 1, 1996. With limited exceptions, it provides that no rule promulgated on or after March 29, 1996, may take effect until it is submitted to Congress and the Comptroller General along with specified supporting documentation. Different requirements apply to major rules. This rule, which is nonmajor, is

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being submitted to Congress in accordance with these requirements.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (``unfunded Mandates Act''), (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact

statement to accompany any proposed or final rule that includes a Federal Mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

As explained earlier in this notice, these amendments would reduce the cost to State, local, and tribal governments and the private sector by allowing States to delay some and exempt others from the requirement to obtain a title V permit. Therefore, the EPA has not prepared a budgetary impact statement for these amendments.

List of Subjects in 40 CFR Part 63

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

Dated: May 22, 1996.
Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as set forth below:

PART 63--[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart N--[Amended]

2. Section 63.340 is amended by revising paragraph (e) to read as follows:

Sec. 63.340 Applicability and designation of sources.

* * * * *

(e)(1) The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of the following types of operations that are not by themselves major sources and that are not located at major

sources, as defined under 40 CFR 70.2, is permanently exempt from title V permitting requirements for that operation:

(i) Any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology; and

(ii) Any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient.

(2) An owner or operator of any other affected source subject to the provisions of this subpart is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.343.

3. Section 63.342 is amended by revising the first sentence of paragraph (c)(2)(i)(B) and introductory text of paragraph (f)(3)(i) to read as follows:

Sec. 63.342 Standards.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) By accepting a Federally-enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with Sec. 63.346(b)(12) to demonstrate that the limit has not been exceeded. * * *

* * * * *

(f) * * *

(3) * * *

(i) The owner or operator of an affected source subject to the work practices of this paragraph (f) shall prepare a maintenance and operation plan to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit, if and when a title V permit is required. The plan shall include the following elements:

* * * * *

Sec. 63.344 [Amended]

4. In Sec. 63.344, paragraphs (e)(3)(v) and (e)(4)(iv) are amended by revising the word ``less'' to read ``more''.

5. Section 63.347 is amended by revising the introductory text in paragraph (e)(2) and paragraph (f)(1) to read as follows:

Sec. 63.347 Reporting requirements.

* * * * *

(e) * * *

(2) If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator a notification of compliance status, signed by the responsible official (as defined in Sec. 63.2) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the appropriate authority. The notification shall list for each affected source:

* * * * *

(f) * * *

(1) If the State in which the source is located has not been delegated the authority to implement the rule, the owner or operator of an affected source shall report to the Administrator the results of any performance test conducted as required by Sec. 63.7 or Sec. 63.343(b). If the State has been delegated the authority, the owner or operator of an affected source should report performance test results to the appropriate authority.

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6. Table 1 to subpart N of Part 63 is amended by revising the entry for ``63.5(a)'' to read as follows:

TABLE 1 TO SUBPART N OF PART 63--GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
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* * * * *

63.5(a)	Yes . .	Except replace the term "source" and "stationary source" in § 63.5(a)(1) and (2) of subpart A with "affected sources."
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Subpart O--[Amended]

7. Section 63.360 is amended by revising paragraph (f) to read as follows:

Sec. 63.360 Applicability.

* * * * *

(f) The owner or operator of a source, subject to the provisions of the title 40, chapter I, part 63 subpart O, using 1 ton (see definition) is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this Sec. 63.360.

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Subpart M--[Amended]

8. Section 63.320 is amended by adding paragraph (k) to read as follows:

Sec. 63.320 Applicability.

* * * * *

(k) The owner or operator of any source subject to the provisions of this subpart M is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this Sec. 63.320.

Subpart X--[Amended]

9. Section 63.541 is amended by adding paragraph (c) to read as follows:

Sec. 63.541 Applicability.

* * * * *

(c) The owner or operator of any source subject to the provisions of this subpart X is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in Sec. 63.546.

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