

forth in the international application, or a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration which was filed under PCT Rule 4.17(iv), the oath or declaration must be accompanied by:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in § 1.17(i); and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

\* \* \* \* \*

(f) A new oath or declaration in accordance with this section must be filed to satisfy 35 U.S.C. 371(c)(4) if the declaration was filed under PCT Rule 4.17(iv), and:

(1) There was a change in the international filing date pursuant to PCT Rule 20.2 after the declaration was executed; or

(2) A change in the inventive entity was effected under PCT Rule 92*bis* after the declaration was executed.

(g) If a priority claim has been corrected or added pursuant to PCT Rule 26*bis* during the international stage after the declaration of inventorship was executed in the international application under PCT Rule 4.17(iv), applicant will be required to submit either a new oath or declaration or an application data sheet as set forth in § 1.76 correctly identifying the application upon which priority is claimed.

Dated: March 16, 2001.

**Nicholas P. Godici,**

*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 01-7132 Filed 3-21-01; 8:45 am]

**BILLING CODE 3510-16-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL-6955-8]

RIN 2060-AF29

#### National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Ferroalloys Production: Ferromanganese and Silicomanganese. The amendments are being made in response to a petition for reconsideration submitted to the EPA following promulgation of the rule and a petition for review filed in the U.S. Court of Appeals for the District of Columbia Circuit. The amendments establish new emission limitations for ferromanganese and silicomanganese production in open submerged arc furnaces. We are establishing four subcategories within this category of furnaces and specifying numerical emission limitations for particulate matter (PM) for each to account for differences in emission potential and control, furnace size, operating conditions, and alloy type. We are making these amendments as a direct final rule because we view the amendments as noncontroversial and anticipate no adverse comments.

In accordance with our general practice, we are also proposing these amendments in the "Proposed Rules" section of this **Federal Register**. If no adverse comments are received in response to this direct final rule, no further action is contemplated with respect to the proposal. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. If adverse comment is received only on a discrete portion of the rule, we will consider withdrawing only that portion of the rule. We will not institute a second comment period on the proposal. Any parties interested in commenting on the amendments should do so at this time.

**DATES:** This rule is effective on May 21, 2001 without further notice, unless EPA receives adverse comment by April 23, 2001. If we receive such comment, we will publish a timely withdrawal in the

**Federal Register** informing the public that this rule will not take effect.

**Judicial Review.** Under Clean Air Act (CAA) section 307(b), judicial review of this nationally applicable final action is available only by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by May 21, 2001. Under section 307(b)(2), the regulations that are the subject of this action may not be challenged later in civil or criminal proceedings brought by EPA in reliance on them.

**ADDRESSES:** *Docket.* All information we considered in developing these amendments is located in Docket No. A-92-59 at the Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. Materials related to these amendments are available upon request from the Air and Radiation Docket and Information Center by calling (202) 260-7548 or 7549. A reasonable fee may be charged for copying docket materials.

*Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-59, 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 (6102), Attention Docket Number A-92-59, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Conrad Chin, Metals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-1512; facsimile (919) 541-5600, electronic mail address: chin.conrad@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

**Regulated Entities.** This action regulates entities that are industrial facilities producing ferromanganese or silicomanganese. Regulated categories and entities include those sources listed in the Primary Standard Industrial Classification Code 3313, Electrometallurgical Products, Except Steel.

At this time, we are aware of only one facility, the Eramet Marietta Inc. (Eramet) plant in Marietta, Ohio, that is subject to the NESHAP. Questions regarding the applicability of this action to a particular entity should be directed to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the relevant permitting authority.

*World Wide Web (WWW)*. In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the action will be placed 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.

**Outline**

The information presented in this preamble is organized as follows:

- I. Overview of the May 20, 1999 Final Rule and Today's Amendments
- II. Eramet's Petition for Reconsideration
- III. Summary of Comments and Changes to the Final Rule
- IV. Associated Benefits and Costs

- V. Administrative Requirements
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - C. Executive Order 13132: Federalism
  - D. Unfunded Mandates Reform Act
  - E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. et seq.
  - F. Paperwork Reduction Act
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. National Technology Transfer and Advancement Act
  - I. Congressional Review Act

**I. Overview of the May 20, 1999 Final Rule and Today's Amendments**

The rule as promulgated in 1999 applies to new and existing ferroalloy production facilities that manufacture ferromanganese and silicomanganese and are major sources of hazardous air pollutants (HAP) emissions or are co-located at major sources of HAP emissions.

Section 112 of the CAA requires us to establish technology-based regulations for all categories and subcategories of major and area sources that are listed pursuant to section 112(c), and that emit one or more of the HAP listed in section

112(b). Major sources are those that emit or have the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. Additional standards may be developed later under section 112(f) to address residual risk that may remain even after application of the technology-based controls.

The following HAP emission sources at a ferroalloy production facility are affected by the final rule:

- Submerged arc furnaces.
- Metal oxygen refining (MOR) process.
- Crushing and screening operations.
- Fugitive dust sources.

The final rule contains emission standards that limit PM emissions, as a surrogate for HAP, from existing and new or reconstructed emission sources. The limits for the submerged arc furnaces differ depending on the alloy produced (ferromanganese or silicomanganese) and furnace design (open or semi-sealed). The final rule also sets limits for the air pollution control devices associated with the MOR process and crushing and screening operations. The following table summarizes the emission standards, by process, as reflected in the final rule prior to today's amendments.

**EMISSION STANDARDS**

New or reconstructed or existing source	Affected source	Applicable PM emission standards
New or reconstructed .....	Submerged arc furnace (primary and tapping)	0.23 kilograms per hour per megawatt (kg/hr/MW) (0.51 pounds per hour per megawatt (lb/hr/MW)), or 35 milligrams per dry standard cubic meter (mg/dscm) (0.015 grains per dry standard cubic foot (gr/dscf))
Existing .....	Open submerged arc furnace (primary and tapping).	16.3 kg/hr (35.9 lb/hr) when producing silicomanganese, or 6.4 kg/hr (14.0 lb/hr) when producing ferromanganese
Existing .....	Semi-sealed submerged arc furnace (primary, tapping, and vent stacks).	11.2 kg/hr (24.7 lb/hr) when producing ferromanganese
New, reconstructed, or existing	MOR process .....	69 mg/dscm (0.03 gr/dscf)
New or reconstructed .....	Individual equipment associated with the crushing and screening operation.	50 mg/dscm (0.022 gr/dscf)
Existing .....	Individual equipment associated with the crushing and screening operation.	69 mg/dscm (0.03 gr/dscf)

The final rule also establishes an opacity limit on shop buildings that house one or more of the submerged arc furnaces to limit process fugitive emissions and imposes a duty on the owner or operator to prepare and operate according to a fugitive dust control plan that describes the measures put in place to control fugitive dust sources.

Owners and operators are required to perform monthly inspections of the equipment that is important to the performance of the furnace capture systems, as well as operation and

maintenance requirements applicable to all air pollution control devices employed to meet the standards.

The final rule also contains detailed compliance provisions including compliance dates, as well as provisions for performance testing, monitoring, recordkeeping, and reporting.

The rule amendments will apply to the same HAP emission sources as the May 20, 1999 rule. Whereas the 1999 rule, in §§ 63.1650(b) and 63.1652(b), sets emission limits for existing open submerged arc furnaces according to alloy produced (ferromanganese or

silicomanganese), the amended rule will take furnace size into consideration and couple emissions with furnace power input. Specifically, the amended rule establishes furnace and alloy specific particulate matter emissions standards for existing open submerged arc furnaces.

Accordingly, applicability of the rule, § 63.1650(b) as amended, for the submerged arc furnaces is expanded from three to five affected sources:

- (1) Open submerged arc furnaces with a furnace power input of 22 MW or less when producing ferromanganese.

(2) Open submerged arc furnaces with a furnace power input greater than 22 MW when producing ferromanganese.

(3) Open submerged arc furnaces with a furnace power input greater than 25 MW when producing silicomanganese.

(4) Open submerged arc furnaces with a furnace power input of 25 MW or less when producing silicomanganese.

(5) Semi-sealed submerged arc furnaces when producing ferromanganese.

The emission standards for existing open submerged arc furnaces under § 63.1653(b), are amended as follows to add new furnace and alloy specific emissions standards:

(1) 9.8 kg/hr (21.7 lb/hr) when producing ferromanganese in an open furnace operating at a furnace power input ("power input") of 22 MW or less; or

(2) 13.5 kg/hr (29.8 lb/hr) when producing ferromanganese in an open furnace operating at a power input greater than 22 MW; or

(3) 16.3 kg/hr (35.9 lb/hr) when producing silicomanganese in an open furnace operating at a power input greater than 25 MW; or

(4) 12.3 kg/hr (27.2 lb/hr) when producing silicomanganese in an open furnace operating at a power input of 25 MW or less.

Other components of the final rule, including the emission limit for semi-closed furnaces, MOR processes, crushing and screening operations, remain unchanged. Emission standards for new and reconstructed submerged arc furnaces as promulgated under § 63.1652(a) are not affected by the amendments. There are also no changes to the opacity limit, fugitive dust control plan, maintenance and operating requirements, or monitoring, recordkeeping, and reporting requirements.

Lastly, to provide sufficient time for compliance with the revisions, we are extending the compliance date under § 63.1650(e)(1) for each owner and operator of an existing affected source from May 21, 2001 to November 21, 2001.

## II. Eramet's Petition for Reconsideration

After promulgation of the standards (64 FR 27450, May 20, 1999), Eramet filed a petition for reconsideration on July 16, 1999. In the petition Eramet argued that in the final rule we relied on information that was not available to the public during the public comment period. In addition, Eramet objected to certain specific changes made between proposal and promulgation that resulted in emission limitations that are more

stringent than those proposed and which were not based on any comments in the public record.

In response to the petition, we considered and analyzed information provided by the petitioner and determined that some of the arguments presented warranted changes to the rule. Specific arguments stated that we did not provide an opportunity for comment on the final numerical emission limit (14.0 lb/hr) for ferromanganese production, which was more stringent than the proposed numerical emission limit; and the final rule did not account for differences in emissions resulting from processing different alloy types in Eramet's two open submerged arc furnaces.

After review of Eramet's petition and submitted data, we have amended the final rule in response to some issues raised. The amended rule will establish separate emission limits for PM as a surrogate for HAP, applicable to open submerged arc furnaces that account for differences in emissions potential and control due to dissimilarities in furnace size, operating conditions, and alloy type.

## III. Summary of Comments and Changes to the Final Rule

Eramet objected to the 14.0 lb/hr PM emission limit for furnaces producing ferromanganese. Specifically, Eramet objected to our dismissal of one of the 21 test runs available for Eramet's furnace #12 when producing ferromanganese as an outlier. In addition, Eramet objected to our use of the highest compliance test result, which is a three-run average, rather than an approach based on all individual runs.

The test run in question is one of three runs conducted by the company in November of 1992 as part of a routine annual performance test. The result, 21.7 lb/hr, appeared unusually high when compared with the results of six other performance tests and 20 other individual test runs obtained on furnace #12 when producing ferromanganese over the 7-year period. We applied a standard statistical test for outlier assessment, the Dixon Criteria, and concluded that the test run should be rejected as an outlier.

We have, in response to Eramet's petition, closely reexamined our previous assessment and have determined that we made a computation error in our earlier outlier determination. As a result, we are reinstating this data point to the body of data to be used for standard setting.

We have 21 individual test runs from seven performance tests on which to

base the standard. Selecting the standard based on the highest individual run would produce a maximum achievable control technology (MACT) standard of 21.7 lb/hr, while basing the standards on the highest three-run average (highest single performance test) would result in a standard of 14.0 lb/hr. Both values were obtained from the November 1992 performance test.

In selecting the appropriate level for the performance standard, consideration must be given to the full range of process and control device operating conditions, which can reasonably be foreseen, under which the standard is to be achieved. This is especially important where the control device applied operates as a constant efficiency device, such as venturi scrubber, in which outlet loading and mass rate will vary depending on inlet loading.

Eramet has provided us a range of operational variables which significantly affect emissions from ferromanganese production in an open furnace. Some of the variables listed, such as moisture content in the raw material, weather, electrode length, and non-optimized tapping interval, are considered by us to be trivial, since a compliance test is a well-planned event, and should be performed under optimized operating conditions. One variable that Eramet listed, raw material changes, is worth consideration.

Eramet has no captive source of ore, reducing agent, or other raw materials in ferromanganese production. Raw materials are purchased on the open market based on price, suitability, and availability. This can lead to wide variations in material sizing and chemistry. Furnace operating conditions are particularly susceptible to changes in ore sizing and lime content. Fine sized ore and high lime content in the charge can lead to unstable furnace conditions and increases in emissions.

Based on the above considerations, we believe that the performance of the venturi scrubber under a reasonable worst case circumstance is best represented by the single highest individual run, and that selecting this highest value ensures that the standard will be met under all foreseeable acceptable operating conditions. As a result, we have selected 21.7 lb/hr PM as the standard for existing open submerged arc furnaces when producing ferromanganese in furnace #12.

Our next amendment to the final rule establishes furnace and alloy specific PM emission limits for Eramet's two open submerged arc furnaces. Based on comments contained in the petition for reconsideration and subsequent

discussions with the petitioner, we are establishing new emission limits for the two open furnaces to account for the difference in emission potential and control due to differences in furnace size, operating conditions, and alloy type. As noted previously, we acknowledge that the two open submerged arc furnaces were not differentiated in establishing emission limits for the two alloys in the final rule. We did not anticipate that either furnace would be used to produce alloy different from what they were producing at promulgation. Consequently, we are amending the rule by taking into consideration the physical and operational differences between the two furnaces to establish furnace and alloy specific PM emission limits.

As highlighted in the Eramet petition, furnaces #1 and #12 are different in several respects that can affect emissions materially, including size, electrode configuration, and electrical power input applied. Physically, furnace #1 is larger than furnace #12. Furnace #1 measures 38 feet in diameter and has an effective furnace depth of 18 feet. Furnace #12 is oval in shape and measures 37.4 feet by 35.7 feet; its furnace depth is 19 feet. Relative to electrode configuration, furnace #1 uses larger diameter electrodes (65 inches) and greater electrode spacing (12.5 feet) than furnace #12, which has 60 inch diameter electrodes and electrode spacing of 11.5 feet. Operationally, furnace #1 operates at higher power input than furnace #12 for the same alloy type. When producing silicomanganese, furnace #1 operates at a power input of 30 MW. In contrast, furnace #12 is projected to operate at a power input of 25 MW when producing silicomanganese. When producing ferromanganese, furnace #12 operates at a power input of 20 to 22 MW, while furnace #1 is expected to operate at 25 MW.

There are no historical emissions data on which to establish furnace specific emission limits for furnace #1 when producing ferromanganese or furnace #12 when producing silicomanganese. Although furnace #1 is permitted for ferromanganese production by the State of Ohio, ferromanganese has not been produced in the furnace since 1993, which predates any requirements by the State of Ohio for performance testing. To our knowledge, furnace #12 has never produced silicomanganese, nor is it presently permitted to do so. Although there are no actual emissions data from which to establish standards, we believe that suitable and defensible standards can be developed on the basis

of engineering judgement and extrapolation.

According to the petitioner, furnace emissions are directly proportional to the power input, with higher input generating greater emissions as a result of higher furnace temperatures and throughput. In addition, the differences in furnace depth should also be considered. A deeper furnace increases the amount of mix above the reaction zone and, thus, increases the trapping and containment of fume within the furnace, reducing emissions discharged from the furnace. As noted above, furnace #1 has a furnace depth of 18 feet, and furnace #12 has a depth of 19 feet. The petitioner estimates that this 1-foot difference in furnace depth results in about a 10 percent difference in potential emissions, with the shallower furnace (#1) being the higher emitter.

In formulating appropriate limits for furnace #1 when producing ferromanganese and furnace #12 when producing silicomanganese, we included the two considerations advanced by the petitioner: that emissions are directly proportional to power input and that emissions differ by 10 percent due to furnace depth. In establishing the emission limit for furnace #1 when producing ferromanganese, we multiplied the ferromanganese emission limit from furnace #12 (21.7 lb/hr) by 25 MW, the projected power input for furnace #1 when producing ferromanganese; divided by 20 MW, the power input for furnace #12 when producing ferromanganese; and multiplied the product by 1.1 to account for the fact that furnace #1 is shallower and thus higher emitting. The resulting emission limit is 29.8 lb/hr.

Similarly, in establishing the emission limit for furnace #12 when producing silicomanganese, we multiplied the silicomanganese emission limit from furnace #1 (35.9 lb/hr) by 25 MW, the projected power input for furnace #12 when producing silicomanganese; divided by 30 MW, the power input for furnace #1 when producing silicomanganese; and multiplied the product by 0.9 to account for the fact that furnace #12 is deeper and thus lower emitting. The resulting emission limit is 27.2 lb/hr.

In setting the emission standards for open submerged arc furnaces with a furnace power input greater than 22 MW producing ferromanganese and with a power input of 25 MW or less producing silicomanganese, EPA relied on engineering analysis. This was necessary because there are currently no furnaces operating that meet the above description and, as a result, EPA has no

representative emissions data on which to base the emission standards. However, we believe that the limits developed on the basis of engineering analysis are reasonable and achievable for these types of furnaces.

If, at some time in the future, either of these emissions limits becomes applicable to an existing furnace and the furnace operator has reason to conclude that the limits cannot be achieved, we will review any supporting data the operator submits and evaluate whether the standards should be revised to account for new information.

The compliance date for existing sources is also being amended. The May 1999 rule set a compliance date of May 21, 2001—2 years from promulgation. Section 112(i) of the CAA requires that we set a compliance date which is as expeditious as practicable, but no more than 3 years from promulgation. Given the timing of today's amendments, we believe that it is necessary and appropriate to provide an additional 6 months for compliance to be achieved. This amended compliance date is 2 years and 6 months from promulgation of the original final rule, and therefore the amendment is within EPA's discretion.

Other components of the final rule, including the emission limit for semi-closed furnaces, MOR processes, crushing, and screening operations, remain unchanged. Emission standards for new and reconstructed submerged arc furnaces as promulgated under § 63.1652(a) are not affected by the amendments. There are also no changes to the opacity limit, fugitive dust control plan, maintenance and operating requirements, or monitoring, recordkeeping and reporting requirements.

#### IV. Associated Benefits and Costs

The amendments are expected to apply to only one facility, the Eramet Marietta plant in Marietta, Ohio. The following discussion of environmental, energy, and economic impacts is limited to this facility. We don't anticipate any new facilities being built now or in the foreseeable future.

We believe that the amendments will have the primary effect of codifying existing control equipment and practices. Therefore, no additional emission control equipment would be required to comply with the amended standards, and no significant emissions reductions or other environmental impacts are anticipated to result from these amendments.

Costs and economic impacts are expected to be minimal. The only costs associated with the amendments are

those required to perform compliance assurance activities such as performance testing, monitoring, reporting, and recordkeeping. However, these costs are minor compared to costs already incurred by the facility in meeting its permit obligations for criteria pollutants.

## V. 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 entitlement, 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, it has been determined that this regulatory action is not a “significant regulatory action” because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### B. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian 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.”

This final rule does not have tribal implications. It 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.

Today’s amendments do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate an affected source. Thus, Executive Order 13175 does not apply to this rule.

### C. 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA’s prior consultation with State and local officials, a summary of the nature of their concerns and the Agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule

with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency’s Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

These amendments do not have federalism implications. They 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, and the amended rule requirements will not supercede State regulations that are more stringent. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### 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, 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 by 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 these 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. The maximum total annual cost of the amendment for any year has been estimated to be less than \$19 million. Thus, today's action is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's action is not subject to the requirements of section 203 of the UMRA.

*E. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 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 the amended rule on small entities, small entity is defined as: (1) a small business ranging from 500 to 1,000 employees; (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.

Based on the above definition of small entities, the Agency has determined that Eramet is not a small business. Therefore, because this amended rule will not impose any requirements on small entities, this action will not have a significant economic impact on a substantial number of small entities.

*F. Paperwork Reduction Act*

Today's amendments to the rule do not affect the information collection burden estimates made previously.

Consequently, the ICR has not been revised for these amendments to the rule.

*G. 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 the environmental health or safety risk that the 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 aspects 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 EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis under section 5-501 of the Executive Order has the potential to influence the regulation. This amended final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling and analytical procedures, and business practices) developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards. This action does not involve the promulgation of any new technical standards.

*I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provided 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 this 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 in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Ferromanganese and silicomanganese production, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 15, 2001.

**Christine Todd Whitman,**  
*Administrator.*

For reasons stated in the preamble, Title 40, Chapter I, part 63 of the Code of Federal Regulations is amended as follows:

**PART 63—[AMENDED]**

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

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

**Subpart XXX—[Amended]**

2. Section 63.1650 is amended by revising paragraphs (b) and (e)(1) to read as follows:

**§ 63.1650 Applicability and compliance dates.**

\* \* \* \* \*

(b) The following sources at a ferromanganese and silicomanganese production facility are subject to this subpart:

(1) Open submerged arc furnaces with a furnace power input of 22 MW or less when producing ferromanganese.

(2) Open submerged arc furnaces with a furnace power input greater than 22 MW when producing ferromanganese.

(3) Open submerged arc furnaces with a furnace power input greater than 25 MW when producing silicomanganese.

(4) Open submerged arc furnaces with a furnace power input of 25 MW or less when producing silicomanganese.

(5) Semi-sealed submerged arc furnaces when producing ferromanganese.

(6) Metal oxygen refining (MOR) process.

(7) Crushing and screening operations.

(8) Fugitive dust sources.

\* \* \* \* \*

(e) *Compliance dates.* (1) Each owner or operator of an existing affected source must comply with the requirements of this subpart no later than November 21, 2001.

\* \* \* \* \*

3. Section 63.1652 is amended by revising paragraph (b) to read as follows:

**§ 63.1652 Emission standards.**

\* \* \* \* \*

(b) *Existing open submerged arc furnaces.* No owner or operator shall cause to be discharged into the atmosphere from any existing open submerged arc furnace exhaust gases (including primary and tapping) containing particulate matter in excess of one of the following:

(1) 9.8 kilograms per hour (kg/hr) (21.7 pounds per hour (lb/hr)) when producing ferromanganese in an open furnace operating at a furnace power input of 22 MW or less; or

(2) 13.5 kg/hr (29.8 lb/hr) when producing ferromanganese in an open furnace operating at a furnace power input greater than 22 MW; or

(3) 16.3 kg/hr (35.9 lb/hr) when producing silicomanganese in an open furnace operating at a furnace power input greater than 25 MW; or

(4) 12.3 kg/hr (27.2 lb/hr) when producing silicomanganese in an open

furnace operating at a furnace power input of 25 MW or less.

\* \* \* \* \*

[FR Doc. 01-7028 Filed 3-21-01; 8:45 am]

**BILLING CODE 6560-50-P**

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1611**

**Eligibility: Income Level for Individuals Eligible for Assistance**

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Legal Services Corporation (“Corporation”) is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

**EFFECTIVE DATE:** This rule is effective as of March 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002-4250; (202) 336-8817; mcondray@lsc.gov.

**SUPPLEMENTARY INFORMATION:** Section 1007(a)(2) of the Legal Services

Corporation Act (“Act”), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation’s Regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 2001 set out below are equivalent to 125% of the current Poverty Guidelines as published on February 16, 2001 (66 FR 10695).

**List of Subjects in 45 CFR Part 1611**

Legal services.

For reasons set forth above, 45 CFR part 1611 is amended as follows:

**PART 1611—ELIGIBILITY**

1. The authority citation for Part 1611 continues to read as follows:

**Authority:** Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

**APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 2001 POVERTY GUIDELINES<sup>1</sup>**

Size of family unit	48 contiguous states and the District of Columbia <sup>2</sup>	Alaska <sup>3</sup>	Hawaii <sup>4</sup>
1 .....	\$11,188	\$13,413	\$12,363
2 .....	14,513	18,138	16,700
3 .....	18,288	22,863	21,038
4 .....	22,063	27,588	25,375
5 .....	25,838	32,313	29,713
6 .....	29,613	37,038	34,050
7 .....	33,388	41,763	38,388
8 .....	37,163	46,488	42,725

<sup>1</sup> The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

<sup>2</sup> For family units with more than eight members, add \$3,775 for each additional member in a family.

<sup>3</sup> For family units with more than eight members, add \$4,725 for each additional member in a family.

<sup>4</sup> For family units with more than eight members, add \$4,338 for each additional member in a family.