



# Federal Register

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**Friday,  
May 20, 2005**

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**Part IV**

## **Environmental Protection Agency**

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**40 CFR Part 63**

**National Emission Standards for  
Hazardous Air Pollutants for Iron and  
Steel Foundries; Final Rule and Proposed  
Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR–2002–0034; FRL–7911–8]

RIN 2060–AM85

**National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries**

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

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

**SUMMARY:** On April 22, 2004, the EPA issued national emission standards to control hazardous air pollutants emitted from iron and steel foundries. This action amends the work practice requirements for materials certification and scrap selection/inspection programs. The direct final amendments add clarification and flexibility but do not materially change the requirements of the rule.

**DATES:** The direct final rule amendments will be effective on August 18, 2005 without further notice, unless we receive adverse comments by June 20, 2005, or by July 5, 2005 if a public hearing is requested. If such comments are received, we will publish a timely withdrawal in the **Federal Register** indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of the direct final amendments for which we do not receive adverse comment will become effective on August 18, 2005. The incorporation by reference of certain publications listed in the direct final rule amendments is approved by the Director of the Federal Register as of August 18, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2002–0034, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket, Docket ID OAR–2002–0034, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: EPA, 1301 Constitution Avenue, NW., Room B102, 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.

**Instructions:** Direct your comments to Docket ID No. OAR–2002–0034. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.regulations.gov) Web sites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public

docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR–2002–0034, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cavender, Emissions, Monitoring and Analysis Division (C339–02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2364, fax number (919) 541–1903, e-mail address: [cavender.kevin@epa.gov](mailto:cavender.kevin@epa.gov).

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

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry .....	331511 331512 331513	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers. Steel investment foundries. Steel foundries (except investment).
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

<sup>1</sup> 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 regulated by this action. To determine whether your facility would be regulated by this action, you should

examine the applicability criteria in §§ 63.7681 and 63.7682 of the national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. If you have any questions regarding the applicability of this action

to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today’s direct final rule

amendments will be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the direct final rule amendments 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.

**Judicial Review.** Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 19, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

**Comments.** We are issuing the amendments as a direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for the amendments contained in the direct final rule in the event that adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

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

- I. Background
- II. Summary of the Direct Final Rule Amendments
- III. Summary of Environmental, Energy, and Economic Impacts
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act

- C. Regulatory Flexibility Act
- 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
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

## I. Background

On April 22, 2004 (69 FR 21906), we issued the NESHAP for iron and steel foundries (40 CFR part 63, subpart EEEEE). The NESHAP establish emissions limits and work practice standards for hazardous air pollutants (HAP) from foundry operations. The NESHAP implement section 112(d) of the CAA by requiring all iron and steel foundries that are major sources of HAP to meet standards reflecting the application of the maximum achievable control technology (MACT).

After publication of the NESHAP, the American Foundry Society, the Alliance of Automobile Manufacturers, and the Steel Founders' Society of America filed petitions for reconsideration of the final rule. One of the petitions requested clarification of certain aspects of the scrap certification and scrap selection/inspection work practice standards in 40 CFR 63.7700 concerning:

- Use of multiple scrap acquisition options;
- Requirements for "certified" metal ingots, oil filters, and organic liquids; and
- Classification of "cleaned" scrap materials.

We agree with the petitioner(s) that certain changes are needed to clarify these aspects of the work practice standards. The changes to the NESHAP in today's direct final rule amendments are expected to resolve issues associated with the work practice standards which require implementing guidance or minor changes in regulatory language.

Because the work practice standards will become effective on April 22, 2005 (1 year after promulgation), the clarifications contained in the direct final rule amendments are time-critical. Today's direct final rule amendments will reduce compliance uncertainties and improve understanding of the rule requirements.

## II. Summary of Direct Final Rule Amendments

The work practice standards in 40 CFR 63.7700(a) require the owner or

operator to comply with the scrap certification requirements in 40 CFR 63.7700(b) or the scrap selection/inspection requirements in 40 CFR 63.7700(c). According to one petitioner, the requirements in 40 CFR 63.7700(a) may be interpreted to require a foundry to either comply with the certification requirements in 40 CFR 63.7700(b) for the entire foundry's scrap material and melt only those materials that are "certified," or to comply with scrap selection/inspection requirements in 40 CFR 63.7700(c) for all scrap materials—even if a significant portion of the scrap material used by the foundry meets the requirements in 40 CFR 63.7700(b).

The requirements in 40 CFR 63.7700(a) were never intended to prevent a foundry from having segregated scrap storage areas, piles or bins, with the scrap material in some of these areas being subject to scrap certification requirements in 40 CFR 63.7700(b) and scrap material in other areas subject to scrap selection/inspection requirements in 40 CFR 63.7700(c). For example, we did not intend to require inspections of pig iron or other "certifiable" scrap simply because a foundry also recycled internal oily turnings. Consequently, we have revised the language in 40 CFR 63.7700(a) to clarify that the scrap requirements apply to each type of scrap material received or each scrap storage area, pile, or bin as long as the scrap material subject to certification requirements in 40 CFR 63.7700(b) remains segregated from scrap material subject to selection/inspection plans in 40 CFR 63.7700(c).

We have also clarified the requirement in 40 CFR 63.7700(b) that the foundry operate by a written certification that it purchases and uses only "certified" metal ingots, pig iron, slitter, or other materials that do not use post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids. The petitioner specifically asked EPA to identify who must certify the metal ingots, to clarify the "no organic liquids" restriction, and to modify the regulatory language to clarify that the prohibited material include only "used" oil filters.

We agree with the petitioner's concerns and have clarified the regulatory text of 40 CFR 63.7700(b). It is not our intent to require a separate certification for metal ingots. Accordingly, we have deleted the word "certified" from 40 CFR 63.7700(b). We have clarified the restriction on oil filters by adding the term "post-consumer" to signify that used filters

are the materials of concern. We have clarified the “no organic liquids” requirement by using the term “free organic liquids.” The direct final rule amendments define “free organic liquids” as any material that fails the “Paint Filter Liquids Test” by EPA Method 9095A (incorporated by reference—see 40 CFR 63.14). If any portion of the material passes through and drips from the filter within the 5-minute test period, the material contains free liquids. EPA Method 9095A is available in EPA publication SW-846, “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” (Revision 1, December 1996).

The petitioner also stated that the regulatory language in 40 CFR 63.7700(b) does not allow for the recycling and use of materials if they have been processed to remove contaminants of concern. In support, the petitioner explained that some suppliers dismantle or crush and then wash post-consumer engine blocks prior to shipment as scrap material. Similarly, some scrap suppliers process oily turnings or used oil filters to make them environmentally acceptable for melting. In response to the petitioner’s concerns, we have added a provision to 40 CFR 63.7700(b) to allow for the use of “cleaned” scrap material. The new provision states that any post-consumer engine blocks, post-consumer oil filters, or oil turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in the certification.

The work practice standards in 40 CFR 63.7700(c)(1) require the owner or operator to operate according to a materials acquisition program to limit the organic contaminants in the scrap. The requirements for material to be charged to a scrap preheater, electric arc furnace, or electric induction furnace are more stringent than those required for scrap material that is to be charged to a cupola furnace. During conversations with the petitioners, concerns were raised that the requirements in 40 CFR 63.7700(c)(1) may be interpreted to require a foundry to exclusively comply with either the requirements in 40 CFR 63.7700(c)(1)(i) or (ii) for the entire foundry’s scrap material—even if the foundry operates both a cupola and one of the other furnace types. This was not our intent. As such, we have added the words “as applicable” to 40 CFR 63.7700(c)(1) to clarify that a foundry may process scrap that meets 40 CFR 63.7700(c)(1)(i) and scrap that meets 40 CFR 63.7700(c)(1)(ii) in the appropriate furnaces.

During discussions with the petitioners regarding clarification of the work practice requirements, questions were raised regarding the ability to perform inspections at the scrap supplier’s facility. In many cases, foundry representatives visit the supplier’s facility to personally select and inspect scrap materials. To clarify our intent that the NESHAP allow inspections to take place at the supplier’s facility, we have expanded 40 CFR 63.7700(c)(3) to specifically address this situation. The direct final rule amendments state that the visual inspections may be performed at the scrap supplier’s facility. However, the inspection procedures in the foundry’s scrap inspection/selection plan must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection. This provision is needed to maintain consistency with the inspection requirements for scrap received at the facility gate.

### III. Summary of Environmental, Energy, and Economic Impacts

The direct final rule amendments will have no effect on environmental, energy, or non-air health impacts because none of the changes affect the stringency of the existing work practice standards. No costs or economic impacts are associated with the direct final rule amendments.

### IV. Statutory and Executive Order Reviews

#### 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.

It has been determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart EEEEE) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0543, EPA ICR number 2096.02. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

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 EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the direct final rule amendments.

For the purposes of assessing the impacts of today’s direct final rule amendments on small entities, small entity is defined as: (1) A small business having 500 or fewer employees, as defined by the Small Business Administration for NAICS codes 331511, 331512 and 331513; (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 today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We conclude that there will be a positive impact on small entities because the direct final rule amendments clarify the rule requirements to reduce compliance uncertainties. The changes do not impose new costs or requirements. We have, therefore, concluded that today's direct final rule amendments will relieve regulatory burden for all small entities.

#### *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 the direct final rule amendments do 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 to the private sector in any 1 year. No new costs are attributable to the direct final rule amendments. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the direct final rule amendments are not subject to 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 direct final rule 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 plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175 (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." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

#### *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, 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 Agency.

We interpret 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 Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because the NESHAP (and the direct final rule amendments) are based on technology performance and not on health or safety risks.

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

These direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because

they are not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer Advancement Act*

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113; 15 U.S.C 272 note) directs the EPA to use voluntary consensus standards 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 procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The direct final rule amendments involve technical standards. The direct final rule amendments incorporate by reference the "Paint Filter Liquids Test" of EPA Method 9095A in EPA Publication SW-846, "Methods for Evaluating Solid Waste, Physical/Chemical Methods (Revision 1, December 1996). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Method 9095A. The search and review results have been documented and placed in the docket for public review.

### *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 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 of the direct final rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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

Environmental protection, Air pollution control, Hazardous

substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: May 6, 2005.

**Stephen L. Johnson,**  
*Administrator.*

■ For the 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 A—[Amended]**

■ 2. Section 63.14 is amended by adding new paragraph (k)(2) to read as follows:

#### **§ 63.14 Incorporations by reference.**

\* \* \* \* \*

(k) \* \* \*

(2) Method 9095A, "Paint Filter Liquids Test," (Revision 1, December 1996) as published in EPA Publication SW-846: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," IBR approved for § 63.7700(b) and 63.7765.

### **Subpart EEEEE—[Amended]**

■ 3. Section 63.7700 is amended by:

- a. Revising paragraph (a).
- b. Revising paragraph (b).
- c. Revising the introductory text of paragraph (c)(1).
- d. Revising paragraph (c)(3)(i)
- e. Adding paragraph (c)(3)(iv).

The revisions and additions read as follows:

#### **§ 63.7700 What work practice standards must I meet?**

(a) For each segregated scrap storage area, bin or pile, you must either comply with the certification requirements in paragraph (b) of this section, or prepare and implement a plan for the selection and inspection of scrap according to the requirements in paragraph (c) of this section. You may have certain scrap subject to paragraph (b) of this section and other scrap subject to paragraph (c) of this section at your facility provided the scrap remains segregated until charge make-up.

(b) You must prepare and operate at all times according to a written certification that the foundry purchases and uses only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings,

lead components, mercury switches, plastics, or free organic liquids. For the purpose of this paragraph (b), "free organic liquids" is defined as material that fails the paint filter test by EPA Method 9095A, "Paint Filter Liquids Test" (Revision 1, December 1996), as published in EPA Publication SW-846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (incorporated by reference—see § 63.14). Any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in this certification.

(c) \* \* \*

(1) A materials acquisition program to limit organic contaminants according to the requirements in paragraph (c)(1)(i) or (ii) of this section, as applicable.

\* \* \* \* \*

(3) \* \* \*

(i) The inspection procedures must identify the location(s) where inspections are to be performed for each type of shipment. Inspections may be performed at the scrap supplier's facility. The selected location(s) must provide a reasonable vantage point, considering worker safety, for visual inspection.

\* \* \* \* \*

(iv) If the inspections are performed at the scrap supplier's facility, the inspection procedures must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection.

\* \* \* \* \*

■ 4. Section 63.7735 is amended by revising paragraph (a) to read as follows:

#### **§ 63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?**

(a) For each iron and steel foundry subject to the certification requirement in § 63.7700(b), you have demonstrated initial compliance if you have certified in your notification of compliance status that: "At all times, your foundry will purchase and use only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids."

\* \* \* \* \*

■ 5. Section 63.7765 is amended by adding, in alphabetical order, a

definition for the term, "Free organic liquids" to read as follows:

**§ 63.7765 What definitions apply to this subpart?**

\* \* \* \* \*

*Free organic liquids* means material that fails the paint filter test by EPA Method 9095A (incorporated by reference—see § 63.14). That is, if any portion of the material passes through and drops from the filter within the 5-

minute test period, the material contains free liquids.

\* \* \* \* \*

[FR Doc. 05-9591 Filed 5-19-05; 8:45 am]

**BILLING CODE 6560-50-P**