

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[EPA-HQ-OAR-2003-0121; FRL-]

RIN 2060-AM43

**National Emission Standards for Hazardous Air Pollutants:
Miscellaneous Organic Chemical Manufacturing**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing. The amendment will extend the compliance date for existing sources by 18 months. Under the promulgated rule, existing affected sources would be required to be in compliance by November 10, 2006. With this final action, existing sources will be required to comply with the rule by May 10, 2008.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION OF THE FINAL RULE AMENDMENT IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0121. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the

index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, 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 and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Coatings and Chemicals Group (C504-04), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5402; fax number: (919) 541-3470; e-mail address: mcdonald.randy@epa.gov.

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

Category	NAICS code*	Examples of regulated entities
Industry.....	3251, 3252, 3253,	Producers of

	3254, 3255, 3256, and 3259, with several exceptions.	specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates
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* 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 is regulated by this action, you should examine the applicability criteria in 40 CFR 63.2435. 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 the final rule amendment will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule amendment will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule amendment is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE AMENDMENT IN THE FEDERAL REGISTER]. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule amendment 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 final rule amendment may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

- I. Background
- II. Response to Comments on the Proposed Amendment to the Compliance Date for Existing Sources
- III. 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 Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

I. Background

On November 10, 2003, we promulgated NESHAP for miscellaneous organic chemical manufacturing as subpart FFFF in 40 CFR part 63 (the "MON"). Petitions for review of the MON were filed in the U.S. Court of Appeals for the District of Columbia Circuit by American Chemistry Council, Eastman Chemical Company, Clariant LSM (America), Inc., Rohm and Haas Company, General Electric Company, Coke Oven Environmental Task Force ("COETF") and Lyondell Chemical Company (collectively "Petitioners").¹ These matters were consolidated into American Chemistry Council, et al. v. EPA, No. 04-1004, 04-1005, 04-1008, 04-1009, 04-1010, 04-1012, 04-1013 (D.C. Cir.). Issues raised by the petitioners included applicability of the rule; leak detection and repair requirements for connectors; definitions of process condenser, continuous process vent, and Group 1 wastewater; treatment requirements for wastewater that is Group 1 only for soluble hazardous air pollutants (HAP); recordkeeping for Group 2 batch process

¹ The Fertilizer Institute and Arteva Specialties S.'ar.l also filed petitions for review but voluntarily withdrew their petitions.

vents; and notification requirements for Group 2 emission points that become Group 1 emission points.

In early October 2005, the parties signed a settlement agreement. Pursuant to section 113(g) of the CAA, notice of the settlement was published in the Federal Register on October 26, 2005 (70 FR 61814). The agreement established a schedule by which EPA would propose and promulgate revisions to the NESHAP; it also includes preamble language for the proposed amendments notice that was agreed to by the parties. The settlement agreement provides that EPA would sign a notice of proposed rulemaking, including an 18-month compliance extension for existing sources, by November 30, 2005. The settlement agreement also calls for EPA to take final action on the proposed 18-month compliance extension within 30 days of the date the comment period on the proposed amendments closes. According to the settlement agreement, notice of final rulemaking on the other proposed amendments must be signed within 150 days of the date the comment period on the proposed amendments closes.

On December 8, 2005 (70 FR 73098), we proposed amendments to address issues raised by the petitioners and correct and clarify other provisions to ensure that the rule is implemented as intended. In this action, we are

promulgating the 18-month compliance extension for existing sources. Final action on the other proposed amendments will occur in a future notice of final rulemaking.

II. Response to Comments on the Proposed Amendment to the Compliance Date for Existing Sources

Eight commenters expressed support for our decision to extend the compliance date for existing sources by 18 months, and no adverse comments were received. The eight commenters agreed with our position in the preamble to the proposed amendments that the proposed amendments, if finalized, are sufficiently far-reaching and complex that the amended rule would effectively be a new rule warranting a new compliance date. Several of the commenters identified changes to definitions and compliance options that will require regulated sources to reevaluate applicability and control strategies, effectively starting over with respect to a number of key provisions. They indicated that significant time will be needed to review and revise emissions modeling analyses and other calculations; develop revised control strategies; redesign, order, and install control equipment; and complete permitting activities. Several of the commenters also concurred with our rationale in the preamble to the proposed amendments that section 112(d)(6) of the CAA

provides authority for the Administrator to set new compliance dates for revised rules. They also noted that there is precedent for such changes, including the extension for the Pesticide Active Ingredient NESHAP (67 FR 38200, June 3, 2002). Therefore, we are taking final action to extend the compliance date for existing sources by 18 months.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a 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 the final rule amendment 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. Extending the compliance date does not alter the information collection requirements for any source owner or operator. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060-0533 (EPA ICR number 1969.02). A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, by mail at the Office of

Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR or OMB number in any correspondence.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as, (1) a small business as defined by the Small Business Administration (SBA) at 13 CFR 121.201; (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 that is independently owned and operated and is not dominant in its field.

For sources subject to this final rule, the NAICS code is 325 and associated small business employee sizes range from 750 to 1000. Relevant NAICS and associated employee sizes are listed below:

NAICS 32511 - Petrochemical Manufacturing - 1,000 employees or fewer
NAICS 325192 - Cyclic Crude and Intermediate Manufacturing - 750 employees or fewer
NAICS 325199 - All Other Organic Chemical Manufacturing - 1,000 employees or fewer

NAICS 325211 - Plastics Material and Resin Manufacturing - 750 employees or fewer
NAICS 325212 - Synthetic Rubber Manufacturing - 1,000 employees or fewer
NAICS 325411 - Medicinal and Botanical Manufacturing - 750 employees or fewer
NAICS 325611 - Soaps and Other Detergents Manufacturing - 750 employees or fewer
NAICS 32592 - Explosives Manufacturing - 750 employees or fewer

After considering the economic impacts of today's final rule amendment on small entities, 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. Sections 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. The final rule amendment extends the compliance date, which

will not impose any additional requirements on 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 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 final rule amendment does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. No costs are attributable to the final rule amendment. Thus, the final rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments, and it imposes no obligations upon them. Therefore, the final rule

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

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires the 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 final rule amendment does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule amendment.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires the 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 final rule amendment does not have tribal implications, as specified in Executive Order 13175. The final rule amendment extends the compliance date and, therefore, imposes no additional burden on the sources. Thus, Executive Order 13175 does not apply to the final rule amendment.

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 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 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.

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 required under section 5-501 of the Executive Order has the potential to influence the regulation. The final rule amendment is not subject to Executive Order 13045 because it is based on technology performance and not health or safety risks.

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

The final rule amendment does not constitute a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because the final rule amendment will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule amendment will not have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; 15

U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

During the rulemaking, the EPA conducted searches to identify voluntary consensus standards in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA-HQ-OAR-2003-0121). The final rule amendment does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, the EPA is not considering the use of any additional voluntary consensus standards for the final rule amendment.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness

Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendment 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 final rule amendment in the Federal

Register. The final rule amendment is not a “major rule” as defined by 5 U.S.C. 804(2). The final rule amendment is effective on [INSERT DATE OF PUBLICATION OF THE FINAL RULE AMENDMENT IN THE FEDERAL REGISTER].

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated:

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the 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 FFFF--[Amended]

2. Section 63.2445 is amended by revising paragraph (b) to read as follows:

§63.2445 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing source on November 10, 2003, you must comply with the requirements for existing sources in this subpart no later than May 10, 2008.

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