

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[AD-FRL-6948-7]

RIN 2060-AH47

**National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule; extension of compliance.

**SUMMARY:** The EPA is taking direct final action to extend certain compliance dates contained in national emission standards for hazardous air pollutant emissions for Group IV polymers and resins for the equipment leaks provisions as applied to polyethylene terephthalate (PET) affected sources. We are approving this compliance extension pursuant to section 301(a)(1) of the Clean Air Act (CAA) to complete reconsideration of equipment leaks provisions and any necessary revision to the rule. We are also correcting a referencing error.

**DATES:** The rule is effective on April 27, 2001 without further notice, unless the EPA receives adverse comment by March 28, 2001 unless a hearing is requested by March 8, 2001. If a hearing is requested, written comments must be received by April 12, 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.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-45 (Group IV Polymers and Resins), Room M-1500, U.S. EPA, 1200 Pennsylvania Avenue, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Barnett, U.S. EPA, Organic Chemicals Group, Emission Standards Division (MD-13) Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541-5605, fax (919) 541-3470, and electronic mail: barnett.keith@epa.gov.

**SUPPLEMENTARY INFORMATION: Docket.**

The docket reflects the full administrative record for this action and includes all the information relied upon by EPA in the development of this rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

*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 the Administrator's signature, a copy of the action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <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.

*Regulated Entities.* Regulated categories and entities include:

| Category      | Examples of regulated entities   |
|---------------|--|
| Industry .... | Facilities manufacturing PET using a batch dimethyl terephthalate (DMT) process, PET facilities using a continuous DMT process, PET facilities using a batch terephthalic acid (TPA) process, and PET facilities using a continuous TPA process. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the Group IV Polymers and Resins standards. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated, you should carefully examine the applicability criteria in § 63.1310 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 26, 2001. Under section 307(b)(2) of the CAA, the requirements that are the subject of this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rule" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for polyethylene terephthalate (PET) affected sources if adverse comments are filed. This rule will be effective on April 27, 2001 without further notice, unless we receive adverse comment by March 28, 2001. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. 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 this action. Any parties interested in commenting must do so at this time.

**I. Background and Rationale**

On September 12, 1996, we promulgated NESHAP for Group IV Polymers and Resins as subpart JJJ in 40 CFR part 63. Section 63.1331 establishes standards for equipment leaks based on the equipment leaks provisions from the Hazardous Organic NESHAP (HON), 40 CFR part 63, subpart H. The final rule required existing sources to comply with 40 CFR 63.1331 beginning March 12, 1997.

Subsequent to the promulgation of the Group IV Polymers and Resins rule, the compliance date for existing PET facilities has been extended to February 27, 2001. In addition, a petition was submitted by two PET manufacturers requesting reconsideration of the technical basis for estimates of emissions, emissions reductions, and costs for equipment leaks emissions control at PET affected sources. A second petition was subsequently filed by a third PET manufacturer requesting the same relief. We elected to act upon the petitioners' requests to reconsider the equipment leaks provisions of the

1996 rule as it applies to PET affected sources.

Our reconsideration has created uncertainty with regard to compliance requirements for the PET equipment leaks provisions. Furthermore, our reconsideration has led the Agency to publish in the **Federal Register** on June 8, 1999, a proposal to deny the petitions (64 FR 30456). We are considering public comments on the proposed denial and will publish a final action on the petitions. Therefore, this period of uncertainty will continue until we publish a final decision. For these reasons, we are providing an extension of the compliance dates associated with the provisions which regulate equipment leaks for PET affected sources for six months to allow time to take final action on the petitions for reconsideration. This extension applies to affected sources in the following regulated subcategories: (1) PET using a batch dimethyl terephthalate process, (2) PET using a continuous dimethyl terephthalate process, (3) PET using a batch terephthalic acid process, and (4) PET using a continuous terephthalic acid process. It does not affect any other provisions of the Group IV Polymers and Resins rule, or any other source categories or subcategories.

## II. Authority for Extension of the Compliance Date

By this action, we are providing, pursuant to section 301(a)(1) of the CAA, an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6), only as necessary to complete reconsideration and potential revision of the rule. We intend to complete reconsideration of the rule and, following the notice and comment procedures of section 307(d) of the CAA, take appropriate action as expeditiously as possible. We do not believe this extension will, as a practical matter, impact the overall effectiveness of the rule. We will seek to ensure that the affected parties are not unduly prejudiced by the EPA's reconsideration. The compliance dates will be extended until August 27, 2001.

At the time of publication of the final decision on the petitions, we will establish new compliance dates as necessary to allow PET facilities sufficient time to comply with the final equipment leaks provisions of the rule.

## III. Impacts

The extension of the compliance dates for equipment leaks at PET affected sources will not affect the eventual annual estimated emissions reductions or the control cost for the rule.

## IV. 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 Office of Management and Budget (OMB) on the basis of the requirements of the Executive Order in addition to its normal review requirements. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

This direct final rule does not fall within any of the four categories described above. Instead, the direct final rule will provide an extension of the compliance dates specified in 40 CFR 63.1311(b) and (d)(6) for PET affected sources. The direct final rule does not add any additional control requirements. This direct final rule was determined to be "non-significant" under Executive Order 12866 and was not submitted for review by OMB.

### B. 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."

This direct final rule 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. This is because the final action applies to affected sources in PET facilities, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

### C. Consultation With Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. The EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, we are required by Executive Order 13084 to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments because they do not own or operate any of the sources affected by this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

#### *D. 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 an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it is based on technology performance, and not on health or safety risks.

#### *E. Unfunded Mandates Reform Act of 1995*

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, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 we establish 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 our 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 today's direct final rule 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. This action does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to the Group IV Polymers and Resins NESHAP and therefore are not required to purchase control systems to meet the requirements of the NESHAP. Regarding the private sector, today's action will not add any additional control requirements. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

We have also determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any enforceable duties on small governments, i.e., they own or operate no sources subject to the NESHAP and, therefore, are not required to purchase control systems to meet the requirements of the NESHAP.

#### *F. Regulatory Flexibility*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. The EPA has also determined that this direct final rule will not have a significant impact on a substantial number of small entities because no small entities are subject to the NESHAP.

#### *G. Paperwork Reduction Act*

For the Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to OMB under the Paperwork Reduction Act. The OMB approved the information collection requirements and assigned OMB control number 2060-0351. 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

the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA has amended 40 CFR part 9 to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

Today's action has no impact on the information collection burden estimates made previously. Therefore, the information collection burden estimates have not been revised.

#### *H. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, § 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Group IV Polymers and Resins NESHAP includes technical standards. Therefore, the EPA searched for applicable voluntary consensus standards by searching the National Standards System Network (NSSN) database. The NSSN is an automated service provided by the American National Standards Institute for identifying available national and international standards.

The EPA searched for methods potentially equivalent to the methods required by the Group IV Polymers and Resins NESHAP, all of which are methods previously promulgated by the EPA. The NESHAP includes methods that measure: (1) determination of excess air correction factor (%O<sub>2</sub>) (EPA Method 3B); (2) sampling site location (EPA Method 1 or 1A); (3) volumetric flow rate (EPA Methods 2, 2A, 2C, or 2D); (4) gas analysis (EPA Method 3); (5) stack gas moisture (EPA Method 4); (6) concentration of organic Hazardous Air Pollutants (EPA Method 18 or 25A); and (7) organic compound equipment leaks (EPA Method 21). These EPA methods are found in appendix A to 40 CFR part 60.

No potentially equivalent methods for the methods in the rule were found in the NSSN database search, and none were brought to our attention in comments on the proposed denial of the

petitions. Therefore, the EPA has decided to use the methods listed above.

*I. 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 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 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). This direct final rule will be effective on April 27, 2001.

**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: February 20, 2001.

**Christine T. Whitman,**  
*Administrator.*

For the reasons set out in the preamble, part 63 of Chapter I of title 40 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 JJJ—[Amended]**

2. Section 63.1311 is amended by revising paragraphs (b) and (d)(6) to read as follows:

**§ 63.1311 Compliance schedule and relationship of this subpart to existing applicable rules.**

\* \* \* \* \*

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or September 12, 1996, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 upon

initial start-up or August 27, 2001, whichever is later.

\* \* \* \* \*

(d) \* \* \*

(6) Notwithstanding paragraphs (d)(1) through (5) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than August 27, 2001.

\* \* \* \* \*

[FR Doc. 01-4652 Filed 2-23-01; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 400, 430, 431, 434, 435, 438, 440, and 447**

**[HCFA-2001-F2]**

**RIN 0938-A170**

**Medicaid Program; Medicaid Managed Care: Delay of Effective Date**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the January 24, 2001 **Federal Register**, this action temporarily delays for 60 days the effective date of the final rule entitled "Medicaid Program; Medicaid Managed Care" published in the January 19, 2001 **Federal Register** (66 FR 6227). That final rule amends the Medicaid regulations to implement provisions of the Balanced Budget Act of 1997 (BBA) that allow the States greater flexibility by permitting them to amend their State plan to require certain categories of Medicaid beneficiaries to enroll in managed care entities without obtaining waivers if beneficiary choice is provided; establish new beneficiary protections in areas such as quality assurance, grievance rights, and coverage of emergency services; eliminate certain requirements viewed by State agencies as impediments to the growth of managed care programs, such as the enrollment composition requirement, the right to disenroll without cause at any time, and the prohibition against enrollee cost-sharing. In addition, that final rule expands on regulatory beneficiary protections provided to enrollees of

prepaid health plans (PHPs) by requiring that PHPs comply with specified BBA requirements that would not otherwise apply to PHPs.

The effective date of that rule, which would have been April 19, 2001, is now June 18, 2001. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Additionally, due to this delay in the effective date of the rule, the implementation date of the rule, which would have also been April 19, 2001, is now June 18, 2001. Therefore, provisions of the rule that must be implemented through contracts with managed care organizations, prepaid health plans, health insuring organizations, or enrollment brokers are effective with respect to contracts that are up for renewal or renegotiation on or after June 18, 2001, but no later than June 18, 2002.

To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553 (b)(3)(1). Alternatively, HCFA's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. sections 553(b)(3)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary, and contrary to the public interest. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest, in the orderly promulgation and implementation of regulations.

**DATES:** The effective date of the rule amending 42 CFR parts 400, 430, 431, 434, 435, 438, 440, and 447 published in the January 19, 2001 **Federal Register** (66 FR 6228) is delayed 60 days until June 18, 2001.

Additionally, the implementation date of the rule is delayed until June 18, 2001. Therefore, provisions of the rule that must be implemented through contracts with managed care organizations, prepaid health plans, health insuring organizations, or enrollment brokers are effective with respect to contracts that are up for renewal or renegotiation on or after June 18, 2001, but no later than June 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bruce Johnson (410) 786-0615.