

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2006-0510; FRL-]

RIN 2060-A046

**Amendments to National Emission Standards for Hazardous Air
Pollutants for Primary Copper Smelting and Secondary Copper
Smelting Area Sources**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the national emission standards for primary copper smelting area sources and secondary copper smelting area sources published on January 23, 2007. The amendments to the national emission standards for primary copper smelting area sources clarify when plants must exhaust gases to a control device and what control devices may be used for this requirement; numbering errors are also corrected. The amendments to the national emission standards for secondary copper smelting area sources clarify the date which defines a new copper smelter and correct a cross-referencing error.

DATES: This direct final rule is effective on [INSERT DATE 90 DAYS FROM DATE OF PUBLICATION] without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]. If the effective date is delayed, timely

notice will be published in the Federal Register. If we receive adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that some or all of the amendments in this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0510 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, 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. EPA-HQ-OAR-2006-0510. EPA's policy is that all comments received will be included in the public docket without change and may be made

available online at www.regulations.gov, 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 www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, 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 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 www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the National Emission Standards for Hazardous Air Pollutants for Four Area Source Categories Docket, EPA/DC, EPA West, Room 3334, 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: Ms. Sharon Nizich, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-2825; fax number: (919) 541-3207; e-mail address: nizich.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

- I. Why is EPA using a direct final rule?
- II. Does this action apply to me?
- III. Where can I get a copy of this document?
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 - B. NESHAP for Secondary Copper Smelting Area Sources
- VI. Statutory and Executive Order Reviews
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 - 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. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Why is EPA using a direct final rule?

EPA is publishing the rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The amendments to the national emission standards for primary copper smelting area sources (40 CFR part 63, subpart EEEEEEE) and secondary copper smelting area sources (40 CFR part 63, subpart FFFFFFF) consist of technical and editorial corrections that do not make material changes to the rule requirements. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make these amendments if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any

parties interested in commenting must do so at this time. For further information about commenting on the rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

The regulated categories and entities potentially affected by the final rule include:

Category	NAICS code ¹	Examples of regulated Entities
Industry...	331411	Primary copper smelting area source facilities that produce copper from copper sulfide ore concentrates using pyrometallurgical techniques.
	331423	Area source facilities that process copper scrap in a blast furnace and converter or use another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap.

¹ 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 affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability

criteria in 40 CFR 63.11146 of subpart EEEEEEE (National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Copper Smelting Area Sources) or 40 CFR 63.11153 of subpart FFFFFFF (NESHAP for Secondary Copper Smelting Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

III. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address:

<http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

IV. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket

ID No. EPA-HQ-OAR-2006-0510. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

V. What are the changes to the NESHAP for primary copper smelting and secondary copper smelting area source?

A. NESHAP for Primary Copper Smelting Area Sources

On January 23, 2007 (72 FR 2944), we issued the NESHAP for Primary Copper Smelting Area Sources (40 CFR part 63, subpart EEEEE). The final rule establishes air emission control requirements for new and existing primary copper smelters that use continuous or batch smelting technologies.

The final rule makes two technical clarifications to this NESHAP in paragraph (a)(2)(ii) of 40 CFR 63.11148 (What are the standards and compliance requirements for existing sources using batch copper converters?). The existing provision states that "during periods when no copper ore concentrate feed is charged

to or molten material tapped from the smelting vessel but the smelting vessel remains in operation to temporarily hold molten material in the vessel before resuming copper production, you must exhaust the process off gas from the smelting vessel to an electrostatic precipitator or baghouse prior to discharge to the atmosphere." As stated, this provision contains conflicting language because molten materials cannot be tapped from and held in a smelting vessel at the same time. Accordingly, we are removing the phrase "or molten materials tapped from" to clarify that the operating conditions when the owner or operator must exhaust the process off gas from a smelting vessel to an appropriate particulate matter (PM) control device is when no copper ore concentrate feed is charged to the smelting vessel but the smelting vessel remains in operation to temporarily hold molten material in the vessel before resuming copper production.

In addition, we are adding to this same provision in paragraph (a)(2)(ii) of 40 CFR 63.11148 "wet scrubber" as one of the types of PM control devices listed. Wet scrubbers are PM control devices that are used at some primary copper smelters for controlling PM emissions from smelting vessels during temporary holding operations. As we mentioned in the preamble to this NESHAP (72 FR 2932, 2938), we developed the standards for existing primary copper area source smelters that use batch technology based on operations at batch converting facilities

that we had determined to be effectively controlling their hazardous air pollutant emissions. One of these facilities uses a wet scrubber to control PM emissions from smelting vessels during the temporary holding operations described above. Having established the generally available control technology based on the use of a wet scrubber, we clearly did not intend to then exclude wet scrubbers from the types of PM control devices that affected owners and operators can use to comply with the rule requirement, nor would we have a basis for such exclusion. Accordingly, we are correcting 40 CFR 63.11148(a)(2)(ii) to include wet scrubbers as one of the types of control devices that can be used to meet the requirement in that provision.

We are also correcting numbering errors in paragraph (c) of 40 CFR 63.11150 (What general provisions apply to this subpart?). Currently paragraph (c) contains two paragraphs numbered as (c)(3), and the introductory text to paragraph (c) makes a reference to four instead of five paragraphs. Accordingly, in the paragraph (c) introductory text, the reference to paragraphs (c)(1) through (4) is corrected to (c)(1) through (5), and the numbering for paragraphs (c)(3), (4), (5) is corrected.

B. NESHAP for Secondary Copper Smelting Area Sources

On January 23, 2007 (72 FR 2952), we issued the NESHAP for Secondary Copper Smelting Area Sources (40 CFR part 63, subpart

FFFFFF). The final rule corrects the date in §63.11153(b), which defines a new affected source under this NESHAP. Both section 112(a)(4) of the Clean Air Act and the part 63 General Provisions at 40 CFR 63.2 define a "new" affected source as one for which construction or reconstruction commenced on or after the date EPA first proposes a relevant emission standard under section 112. In §63.11153(b), we inadvertently defined a new source as being constructed or reconstructed before the date of proposal of this NESHAP (October 6, 2006). Therefore, we are amending §63.11153(b) to correctly state that a new affected source is one that is constructed or reconstructed on or after October 6, 2006. We are also correcting a cross reference in 40 CFR 63.11157(b)(5). Paragraph (b)(5) of this section is corrected to refer to the work practice standard in §63.11155(g) instead of §63.11157(g), which is not only an incorrect reference but is also nonexistent.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. EPA is taking this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources. These corrections do not include any information collection requirement.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) a small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (less than 1,000 employees for primary copper smelting and less than 750 employees for secondary copper smelting); (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.

After considering the economic impacts of the final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that small businesses in these area source categories will not incur any adverse impacts

because EPA is taking this action to make certain technical and editorial corrections in the NESHAP for primary and secondary copper smelting area sources, and these corrections do not create any new requirements or burdens. No costs are associated with these amendments to the two NESHAP.

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, 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 to 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 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 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 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.

EPA has determined that this action 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 one year. EPA is taking this action to make certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. No costs are associated with these corrections. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. The technical and editorial corrections made through this action

contain no requirements that apply to such governments, impose no obligations upon them, and will not result in any expenditures by them or any disproportionate impacts on them. Therefore, the final rule is 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" are 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 does not have federalism implications. The final rule makes certain technical and editorial corrections to the NESHAP for primary and secondary smelting area sources. These final corrections do not impose requirements on State and local governments. They have no 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. Thus, Executive Order 13132 does not apply to the final rule.

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 final rule does not have tribal implications, as specified in Executive Order 13175. The final rule makes certain technical and editorial corrections to the NESHAP for primary and secondary copper smelting area sources. These final corrections do not impose requirements on tribal governments. They also have no 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. Thus, Executive Order 13175 does not apply to the final rule.

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, 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 EPA.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern 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 is not subject to Executive Order 13045 because it makes technical and editorial corrections to NESHAP that are based on technology performance and not on health or safety risks.

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

The final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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, section

12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the final rule will not have disproportionately high and adverse human health or

environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical and editorial corrections in the final rule do not change the level of control required by the NESHAP.

K. 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 Congress and to the Comptroller General of the United States. EPA will submit a report containing these final rule amendments 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 amendments 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 final rule will be effective on [INSERT DATE 90 DAYS FROM DATE OF PUBLICATION].

Amendments to National Emission Standards for Hazardous Air
Pollutants for Primary Copper Smelting and Secondary Copper
Smelting Area Sources
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List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous
substances, 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 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 EEEEEEE--[Amended]

2. Section 63.11148 is amended by revising paragraph (a)(2)(ii) to read as follows:

§63.11148 What are the standards and compliance requirements for existing sources using batch copper converters?

(a) * * *

(2) * * *

(ii) During periods when no copper ore concentrate feed is charged to the smelting vessel but the smelting vessel remains in operation to temporarily hold molten material in the vessel before resuming copper production, you must exhaust the process off gas from the smelting vessel to an electrostatic precipitator, wet scrubber, or baghouse prior to discharge to the atmosphere.

* * * * *

3. Section 63.11150 is amended as follows:

a. By revising paragraph (c) introductory text.

b. By redesignating paragraph (c)(4) as paragraph (c)(5).

c. By redesignating the second paragraph (c)(3) as paragraph (c)(4).

§63.11150 What General Provisions apply to this subpart?

* * * * *

(c) If you own or operate an existing affected source subject to §63.11148, your notification of compliance status required by §63.9(h) must include the information specified in paragraphs (c)(1) through (5) of this section.

* * * * *

Subpart FFFFFFFF-[Amended]

4. Section 63.11153 is amended by revising the third last sentence in paragraph (b) to read as follows:

§63.11153 Am I subject to this subpart?

* * * * *

(b) * * * Your secondary copper smelter is a new affected source if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

* * * * *

5. Section 63.11157 is amended by revising paragraph (b)(5) to read as follows:

§63.11157 What General Provisions apply to this subpart?

* * * * *

(b) * * *

(5) This certification of compliance, signed by a responsible official, for the work practice standard in §63.11155(g): "This facility has an approved monitoring plan in accordance with §63.11155(g)."