


## Form #1

FILED

2004 JUN 30 P 4:57

WEST VIRGINIA  
SECRETARY OF STATE

  
Stephanie R. Timmermeyer, Secretary

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

## BRIEFING DOCUMENT

**Rule Title:** 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"

**A. AUTHORITY:** W.Va. Code §22-5-4

**B. SUMMARY OF RULE:**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to 40 CFR Part 61 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule adopts by reference the NESHAP standards of 40 CFR Parts 61 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 61, promulgated as of June 1, 2004. The rule also adopts associated reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40 CFR Part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of July 1, 2004: National Emission Standards for Asbestos, and Benzene Waste Operations, Emissions of Radionuclides Other Than Radon From Department of Energy Facilities and Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

As set forth in 40 CFR §61.04(b), Section 112(d) of the CAA directs the U.S. EPA Administrator to delegate to each State the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources. Promulgation of this rule will enable the Department of Environmental Protection, Division of Air Quality (DAQ) to continue to be the primary enforcement authority for NESHAP promulgated under 40 CFR Part 61 by U.S. EPA as of June 1, 2004. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the CAA, as amended. Revisions to the rule include general annual updates and incorporation by reference rule language clarification.

**D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At its June 24, 2004 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Thursday, June 24, 2004

1356 Hansford Street, Charleston, WV

1<sup>st</sup> Floor Conference Room – OER Conference Room

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris (via conference call)

Jackie Hallinan

Rick Roberts

Debra Bias for Lisa Dooley

Bill Raney

**DEP:**

Joe Dawley, General Counsel

Ken Ellison, Director - Division of Land Restoration

Allyn Turner, Director – Division of Water and Waste Management

Bill Brannon, Division of Water and Waste Management

Mike Dorsey – Division of Water and Waste Management

Mike Zeto – Office of Environmental Enforcement

Joe Parker, Director, DEP Division of Mining and Reclamation

Charlie Sturey – DEP Division of Mining and Reclamation

Cindy Maynard – DEP Office of Environmental Advocate

Laura Crowder – DEP Division of Air Quality

Jim Mason – DEP Division of Air Quality

Connie Graytop Lewis – WV Environmental Council

Liz Garland – WV Rivers Coalition

Jason Bostic – WV Coal Association

Tim Beli – Nelson Brothers

Bruce Gilbert – Nelson Brothers

Joseph M. Dawley, WVDEP – General Counsel, called the meeting to order at 10:00 a.m.

Updates on rules were presented as follows:

**Division of Air Quality - Jim Mason and Laura Crowder**

- 45CSR14 - PSD rule under Part C of the CAA, 45CSR14 has not been revised since 1995. This rule establishes permit requirements for major sources in attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.
- 45CSR15 - NESHAP incorporation by reference ("IBR") rule under Part 61, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR16 - NSPS IBR rule under Part 60, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR19 - NSR rule under Part D of the CAA, 45CSR19 has not been revised since 1993. This rule establishes permit requirements for major sources in non-attainment areas or that cause or

contribute to non-attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.

- 45CSR25 - Hazardous waste IBR rule is typically updated each year. Revisions to the proposed rule include general annual IBR updates: stylistic, citing and technical corrections, and revisions required to maintain consistency with the DW&WM's rule 33CSR20 and federal counterpart regulation. The consistency of 45CSR25, 33CSR20 and federal counterpart regulation is important to maintain EPA delegation of authority to implement and enforce the West Virginia RCRA Hazardous Waste Management Program.
- 45CSR34 - NESHAP IBR rule under Part 63, is typically updated each year. Revisions to the rule accommodate annual IBR updates.

*Bill Raney inquired about the table in which mercury is crossed out. This was deleted from EPA's rule so it was deleted from DEP's rule.*

*Larry Harris also raised a question regarding the definition of visibility.*

**Office of Waste Management – presented by Mike Dorsey, Deputy Chief, DEP Division of Water and Waste Management**

- 33 CSR 20 - Hazardous Waste Management Rule - The revisions in the proposed rule will adopt by reference federal regulations in effect as of July 1, 2004, primarily clarifications and technical corrections. These revisions allow the State to remain consistent with the federal program and to maintain State authorization of the federal program.
- 33 CSR 31 (Underground Storage Tank Fee Assessments) - This rule will increase the annual registration fee for the Underground Storage Tank Program from \$25 per tank to \$65 per tank. An emergency rule is already in place to implement the increase in fees.
- 

**The following were presented by Allyn Turner, Director, DEP Division of Water and Waste Management**

- 33 CSR 2 (Sewage Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.
- 33 CSR 8 (Beneficial Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.

**Office of Explosives and Blasting – presented by Joe Parker, Acting Director, DEP Division of Mining and Reclamation**

- 199 CSR 1 (Surface Mining Blasting Rule) - The revisions include incorporation of several provisions from the Surface Mining Rule (38 SCR 2). These include adding the definitions of "community or institutional building," "public building," and "structure" and including provisions for the erection and maintenance of blasting signs. The proposed rule also includes revisions to the Certified Blaster enforcement provisions to address inconsistencies identified by the Federal Office of Surface Mining. Lastly, the proposed rule includes a provision that allows the Office of Explosives and Blasting to conduct an evaluation of a certified blasters performance.

*Bill Raney inquired about page 22/Performance Evaluation – raising point about suspending license procedures. Mr. Raney indicated he would request a meeting to reconcile differences.*

## **Office of Water Resources – presented by Allyn Turner, Director, DEP Division of Water and Waste Management**

- 47CSR26 (NPDES Permit Fee Rule) - Proposed revision includes a new permit fee provision for concentrated animal feedlot operations ("CAFO") to implement a new federal permit program for CAFOs.
- 47 CSR 10 (NPDES Permit Rule) - Proposed revisions include provisions to implement the federal Phase II Storm Water program and the CAFO permitting program.

*Rick Roberts inquired about the definition of storm water and permitted and non-permitted enforcement strategy. Director Turner indicated that this matter is still in discussion and there is no answer at this point.*

## **Division of Mining and Reclamation**

- 38CSR2 (Surface Mining and Reclamation Rule) The proposed revisions (1) change various sections of the rule to be consistent with its federal counterpart, (2) correct sections of the rule not approved by the Federal Office of Surface Mining, and (3) provide clarifications and remove contradictory language. These provisions pertain to the following subject areas: definition of previously mined areas, incidental boundary revisions, design criteria for impoundments, commercial forestry post-mining land use, homestead post-mining land use, revegetation standards, and the water supply replacement waiver.

## **Environmental Excellence Rule**

- Optimistic about proposing at next session.
- Dave Bassage is working on draft, but has nothing to share at this point.

## **Rule Schedule**

- July 28, 2004 – last day for filing proposed rules for public comment.
- August 27, 2004 – Must file rules with Secretary of State and Legislative Rule-Making Review Committee

## **DEP Division Updates**

### ***Division of Water and Waste Management***

- Rick Roberts posed question regarding phosphorous and nitrogen in the Potomac River
- Allyn Turner explained about the Chesapeake Bay Program and the Gulf of Mexico Hypoxia actions nutrient criteria working group.

### ***Air Quality***

- NT, CT, NJ and PA are suing Allegheny Energy, Inc. – which affects 5 WV plants and three PA plants.
- States assert Allegheny modified power plants in violation of Prevention Significant Deterioration provision of ACT and such modifications caused excess NOx and SO2 emissions damage.
- States allege violations in construction/operation of major modifications to power plans without obtaining pre-construction permits.
- EPA not pursuing enforcement at this time.

- West Virginia previously declined to join in a suit against AEP alleging same type of violations.

### ***Abandoned Mine Lands***

#### Science Advisory Committee Statement

- Agency should have benefit of science before promulgating rules.
- Jackie Hallinan expressed concern about state agencies with political influence and what kind of science they intend to use in rulemaking.
- Ken Ellison wants science to be transparent with supporting and substantiating credit to help make better-informed decisions and move forward so all can see what is happening.

Proposed AML Enhancement Rule distributed.

- Will bring DEP in-line with Office of Surface Mining initiative.

### **DEP Web Page**

- Link with web page not up yet.

### **Upcoming Advisory Council meetings tentative dates:**

- September 16, 2004
- December 16, 2004

Joe Dawley adjourned meeting at 12:15 p.m.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"

Type of Rule:  X  Legislative        Interpretive        Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE  
Charleston, WV 25304-2943

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>PERSONAL SERVICES</b>	0	0	0	0	0
<b>CURRENT EXPENSE</b>	0	0	0	0	0
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0	0	0
<b>EQUIPMENT</b>	0	0	0	0	0
<b>OTHER</b>	0	0	0	0	0

2. Explanation of Above Estimates:

Costs anticipated to be incurred in the implementation of federal rules promulgated under 40 CFR Part 61 as of July 1, 2004 will be covered under prior budget estimates for implementing Title V of the Clean Air Act, as amended, for which full program approval was issued by the U.S. Environmental Protection Agency on January 8, 2002.

3. Objectives of These Rules:

This rule establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements pursuant to section 112 of the Clean Air Act, as amended. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.



4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

See section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

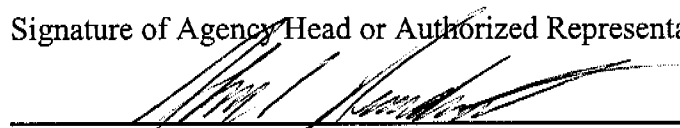
No impact above that resulting from the currently applicable federal emission standards.

C. Economic Impact on Citizens/Public at Large.

No impact above that resulting from the currently applicable federal requirements.

Date: June 29, 2004

Signature of Agency Head or Authorized Representative:



John A. Benedict, Director

FILED  
2004 JUN 30 P 4:57  
WEST VIRGINIA  
SECRETARY OF STATE

**TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OFFICE OF AIR QUALITY**

**SERIES 15  
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS  
PURSUANT TO 40 CFR PART 61**

**§45-15-1. General.**

1.1. Scope. -- This rule establishes and adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency pursuant to 40 CFR Part 61 and section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.2. Authority. -- W.Va. Code §22-5-4.

1.3. Filing Date. -- ~~April 30, 2004.~~

1.4. Effective Date. -- ~~June 1, 2004.~~

1.5. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, effective ~~July 1, 2002~~ July 1, 2004, as amended by the Federal Register through June 1, 2003.

1.6. Former Rules. -- This legislative rule amends 45CSR15 "Emission Standards For Hazardous Air Pollutants Pursuant to 40 CFR Part

61" which was filed ~~April 16, 2002~~ April 30, 2004, and which became effective ~~July 1, 2002~~ June 1, 2004.

**§45-15-2. Definitions.**

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency or his or her authorized representative.

2.2. "Clean Air Act" ("CAA") means 42 U.S.C. §§7401 et seq.

2.3. "Hazardous air pollutant" means any air pollutant listed pursuant to 40 CFR Part 61.01(a).

2.4. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.5. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Part 61. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

**§45-15-3. Requirements.**

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, reconstructed, modified, or operated any source subject to the provisions of 40 CFR Part 61 which

results or will result in a violation of this rule.

**§45-15-4. Adoption of Standards.**

4.1. Standards. -- The Secretary hereby adopts and incorporates by reference the provisions of 40 CFR Parts 61 and 65, to the extent referenced in 40 CFR Part 61, including any reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 65, effective ~~July 1, 2002~~ July 1, 2004, as amended by the Federal Register through June 1, 2003, for the purposes of implementing a program for emission standards for hazardous air pollutants, except as follows:

4.1.a. 40 CFR §61.16 is amended to provide that information shall be available to the public in accordance with W.Va. Code §§22-5-1 et seq., W.Va. Code 29B-1-1 et seq., and 45CSR31; and

4.1.b. Subparts B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61 shall be excluded.

**§45-15-5. Secretary.**

5.1. Any and all references in 40 CFR Parts 61 and 65 to the "Administrator" are amended to be the "Secretary" except as follows:

5.1.a. where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State;

5.1.b. where provisions occur which refer to:

5.1.b.1. alternate means of emission limitations;

5.1.b.2. alternate control technologies;

5.1.b.3. innovative technology waivers;

5.1.b.4. alternate test methods;

5.1.b.5. alternate monitoring methods;

5.1.b.6. waivers/adjustments to record-keeping and reporting;

5.1.b.7. emissions averaging; or

5.1.b.8. applicability determinations; or

5.1.c. where the context of the regulation clearly requires otherwise.

**§45-15-6. Permits.**

6.1. Nothing contained in this adoption by reference shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall in any way be limited or inapplicable.

**§45-15-7. Inconsistency Between Rules.**

7.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.



# Federal Register

---

Thursday,  
September 18, 2003

---

## Part II

### **Environmental Protection Agency**

---

40 CFR Part 61

National Emission Standards for  
Hazardous Air Pollution for Asbestos;  
Direct Final Rule and Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 61****[OAR-2002-0082, FRL-7561-2]****National Emission Standards for Hazardous Air Pollutants for Asbestos****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule; amendments.

**SUMMARY:** On November 20, 1990, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for asbestos under section 112 of the Clean Air Act (CAA). This action will amend the citation for labeling containers of asbestos waste materials, based on requirements in the Occupational Safety and Health Administration (OSHA) asbestos standard for the construction industry for proper labeling of asbestos waste. The amendments are being made to correctly cite the appropriate numbering of the provisions in the OSHA regulations. We are making the amendments by direct final rule,

without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

**DATES:** The direct final rule is effective on November 17, 2003 without further notice, unless EPA receives adverse written comment by October 20, 2003 or if a public hearing is requested by September 29, 2003. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket Center (6102T), Attention Docket Number OAR-2002-0082, EPA West, Room B-108, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket Center (6102T), Attention Docket Number OAR-2002-0082, U.S. EPA, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. We request that a separate copy of each public comment

also be sent to the contact person listed below (*see FOR FURTHER INFORMATION CONTACT*).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Fairchild, U.S. EPA, Minerals and Inorganic Chemicals Group (C-504-05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5167, facsimile number (919) 541-5600, electronic mail address: [fairchild.susan@epa.gov](mailto:fairchild.susan@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Entities potentially regulated by this action are owners and operators of: asbestos mills, fabricating and manufacturing operations that involve asbestos or asbestos-containing products, demolition and renovation operations involving asbestos-containing building materials, operations in which asbestos-containing materials are spray applied, and active and inactive asbestos waste disposal sites.

Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS	Examples of regulated entities
Industrial .....	23	Construction.
Industrial .....	23594	Wrecking and Demolition Contractors.
Industrial .....	562112	Hazardous Waste Collection.
Industrial .....	562211	Hazardous Waste Treatment and Disposal.
Industrial .....	5629	Remediation and Other Waste Management Services.
Industrial .....	56191	Packaging and Labeling Services.
Industrial .....	332992	Small Arms Ammunition Manufacturing.
Industrial .....	33634	Motor Vehicle Systems Manufacturing.
Industrial .....	327	Nonmetallic Mineral Product Manufacturing.
Industrial .....	3279	Other Nonmetallic Mineral Product Manufacturing.
Industrial .....	32791	Abrasive Product Manufacturing.
Industrial .....	32799	All Other Nonmetallic Mineral Product Manufacturing.

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 § 61.140 of the final rule. 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.

**Docket.** The EPA has established an official public docket for this action under docket number OAR-2002-0082. The public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does

not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center 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. The telephone number for the Air Docket is (202) 566-1742.

**Electronic Access.** You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

**Comments.** We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We consider the

changes to be noncontroversial because the only effect is to correctly cite the appropriate OSHA labeling requirements referenced in the asbestos NESHAP for labeling containers of asbestos waste. The revisions adopted by the direct final rule retain the labeling requirements in 40 CFR 61.150. In the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that timely and significant adverse comments are received.

If we receive any relevant adverse comments on the amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

**Worldwide Web (www).** In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site 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 CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 17, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule 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 may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

**Outline.** The following outline is provided to aid in reading this preamble to the direct final rule.

#### I. Background

- II. Technical Amendment to the Asbestos NESHAP
  - A. How are we changing the labeling citations?
- 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 Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Congressional Review Act

#### I. Background

On November 20, 1990, the **Federal Register** published EPA's revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M (55 FR 48406). That final rule contained regulatory provisions for the labeling of asbestos waste that cited to regulations then in place from OSHA for proper labeling of asbestos waste. Subsequent to the publication of that rule, OSHA has renumbered the provisions cited in the asbestos NESHAP. The direct final rule amendments identify the current OSHA regulatory citations for properly labeling asbestos waste that is managed under the asbestos NESHAP.

#### II. Technical Amendment to the Asbestos NESHAP

The current OSHA citations identified in 40 CFR 61.150 (a)(1)(iv) and Table 1 found at 40 CFR 61.156 do not correctly identify the appropriate OSHA regulations. The direct final rule amendments will correct the paragraph and table to conform with the applicable and appropriate OSHA regulations.

##### A. How Are We Changing the Labeling Citations?

When EPA last revised the asbestos NESHAP, EPA's regulations regarding labeling (40 CFR 61.150(a)(1)(iv) and Table 1 found at 40 CFR 61.156) cited to regulations then in place from the Occupational Safety and Health Administration (OSHA) for proper labeling of asbestos waste. Those citations were 29 CFR 1910.1001(j)(2) and 1926.58(k)(2)(iii). Since that time, OSHA has renumbered the regulations cited in the NESHAP for labeling asbestos waste (see 59 FR 40964, August

10, 1994; and 60 FR 33973, June 29, 1995). The asbestos NESHAP regulation at 40 CFR 61.150(a)(1)(iv) will now cite 29 CFR 1910.1001(j)(4) and 1926.1101(k)(8). In Table 1-Cross Reference to Other Asbestos Regulations, the left hand column under OSHA, the citation 28 CFR 1926.58 will be deleted and replaced with 29 CFR 1101.

#### III. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that the amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

##### B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060-0101. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 0111.10) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at

auby.susan@epamail.epa.gov, or by calling (202) 566-1672. A copy may also be downloaded from the Internet at <http://www.epa.gov/icr>.

Today's action consists primarily of clarifications to the final rule that impose no new information collection requirements on industry or EPA. For that reason, we have not revised the ICR for the existing rule.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA has determined that the amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's technical amendments on small entities, small entities are defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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 impact on a substantial number of small entities. The direct final rule amendments will not impose any new requirements on small entities.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one 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 of 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 potential 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 aggregate, or the private sector in any one year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule amendments.

#### 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. The amendments change only the citation of the labeling requirements for asbestos waste and do not modify existing or

create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. The technical amendments will not have new 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. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 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. They would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

#### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns 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 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 Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

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

The 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 and Advancement Act**

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

**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 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**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Hazardous substances.

Dated: September 12, 2003.

**Marianne L. Horinko,**  
*Acting Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 61 is amended as follows:

**PART 61—[AMENDED]**

■ 1. The authority citation for part 61 continues to read as follows:

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

**Subpart M—[AMENDED]**

■ 2. Section 61.150 is amended by revising paragraph (a)(1)(iv) to read as follows:

**§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(4) or 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

\* \* \* \* \*

■ 3. Section 61.156 is amended by revising Table 1 to read as follows:

**§ 61.156 Cross-reference to other asbestos regulations.**

\* \* \* \* \*

**TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS**

Agency	CFR citation	Explanation
EPA	40 CFR part 763, subpart E	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR part 427	Effluent standards for asbestos manufacturing source categories
	40 CFR part 763, subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.1101	Worker protection measures for all construction work involving asbestos, including demolition and renovation work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR part 56, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR part 57, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR parts 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.







# Federal Register

---

Thursday,  
December 4, 2003

---

## Part V

## Environmental Protection Agency

---

40 CFR Part 61

National Emission Standard for Benzene  
Waste Operations; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 61**

[OAR-2003-0147; FRL-7594-3]

RIN 2060-AJ87

**National Emission Standard for Benzene Waste Operations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; amendments.**SUMMARY:** On November 12, 2002, the EPA issued amendments to the national emission standard for benzene waste

operations as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event we received any adverse comments. Because an adverse comment was received on provisions related to control devices, we withdrew the corresponding parts of the direct final rule on February 6, 2003. This action promulgates the provisions that were withdrawn based on the proposed rule published on November 12, 2002. This action also amends the rule to correct a cross-reference citation.

**EFFECTIVE DATE:** December 4, 2003.**ADDRESSES:** The official public docket is available for public viewing at the EPA

Docket Center, EPA West, Room B-102, 1301 Constitution Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Waste and Chemical Process Group (C504-05), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0884, facsimile number (919) 541-5600, electronic mail (e-mail) address, [lucas.bob@epa.gov](mailto:lucas.bob@epa.gov).

**SUPPLEMENTARY INFORMATION**

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

Category	NAIC <sup>1</sup>	Examples of regulated entities
Industry .....	32512-325182 32411 331111 22121 562211 324110	Chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities that manage waste generated by these industries.
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 the final rule amendments. To determine whether your facility is regulated by the final rule amendments, you should examine the applicability criteria in 40 CFR 61.340 of the national emission standard for benzene waste operations. If you have any questions concerning applicability and rule determinations, contact the technical contact person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Docket.** The EPA has established an official public docket for this action including both Docket ID No. OAR-2003-0147 and Docket ID No. A-2001-23. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule amendments. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B-102, 1301 Constitution Ave., NW., Washington DC. The EPA Docket Center

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 Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**Electronic Docket Access.** You may access the final rule amendments electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket> to view public comments, access the index listing the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

**Worldwide Web (WWW).** In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule amendments 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. 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 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 February 2, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the 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 final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

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

- I. Background
- II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations
- III. Editorial Correction to the Amendments
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act

- C. Regulatory Flexibility Analysis
- 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 March 7, 1990, we issued the national emission standard for benzene waste operations (40 CFR part 61, subpart FF). Subpart FF applies to equipment and processes at certain chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities that treat, store, or dispose of waste generated by those facilities.

On November 12, 2002, we issued a direct final rule (67 FR 68528) and a parallel proposed rule (67 FR 68546) to amend the national emission standard for benzene waste operations. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comments by December 12, 2002 (or February 18, 2003, if a public hearing was requested), on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment.

We subsequently received an adverse comment from one commenter on the provisions related to control devices in a new compliance option for tanks equipped with an enclosure.

Accordingly, we withdrew 40 CFR 61.343(e) introductory text and withdrew and reserved paragraph (e)(2) in § 61.343 (68 FR 6082, February 6, 2003). The remaining provisions, for which we did not receive any adverse comments, became effective on February 10, 2002. After full and careful consideration of the comment, we are promulgating the amendments previously withdrawn based on the parallel proposal published on November 12, 2002.

## II. Response to Comment on Amendments to the National Emission Standard for Benzene Waste Operations

The direct final rule published on November 12, 2002, included amendments to 40 CFR 61.343 of the benzene waste final rule that add a new compliance option for tanks located

inside a permanent total enclosure. The new compliance option was adopted from similar standards established under the Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subparts CC). This change was first requested as an alternative emission limitation by a company subject to both the benzene waste final rule and the RCRA subparts CC rules. Under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, tanks are specifically exempted from the standards provided that, among other conditions, the tank is located inside an enclosure, and the enclosure is vented to a control device designed and operated in accordance with the requirements in the benzene waste national emission standard.

Prior to development of the direct final rule amendments and parallel proposal, we reviewed the information submitted by the company and determined that their control system (a tank located inside a permanent total enclosure with emissions vented through a closed vent system to an enclosed combustion device) provided a level of control of benzene equivalent to that required by the national emission standard for benzene waste operations. Based on this equivalency determination, we issued direct final rule amendments to the national emission standard by adding a new compliance option that allowed tanks to be located inside a permanent total enclosure that routes organic vapors to an "enclosed combustion control device." This is the most common type of control device used for tanks located inside a total enclosure.

The commenter objected to provisions that restricted applicable emission controls for the compliance option (*i.e.* the controls on the emissions from the tank in the enclosure) to an "enclosed combustion control device." He correctly pointed out that the national emission standard allows a wide range of control devices to be used to comply with the requirements. In fact, a "control device" is defined in 40 CFR 61.341 of the rule to mean an enclosed combustion device (vapor incinerator, boiler, or process heater); a vapor recovery system (carbon canister or condenser); or flare.

The commenter also stated that the amendments were inconsistent with the spirit of 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules, in that they would lead to situations where the RCRA rules would continue to apply but were not, in fact, intended to be applicable any longer. The anomalous situation put forward by the commenter

would be where a tank is located inside an enclosure, and the enclosure is vented to a vapor recovery system designed and operated in accordance with the requirements in the benzene waste national emission standard. The commenter stated that their tanks meet all the requirements for the exemption from the RCRA rules. In this case, however, the control device applied to the emissions from the permanent total enclosure is not an enclosed combustion control device. Consequently, the facility would not qualify for the RCRA exemption, an unintended outcome.

It was not our intention to restrict the new compliance option for tanks to enclosed combustion control devices. Any of the control devices allowed under the benzene waste national emission standard can be used under the new compliance option provided it meets the control device performance standards in 40 CFR 61.349 of subpart FF. The benzene waste national emission standard also contains procedures and requirements for requesting approval of a control device other than an enclosed combustion system, vapor recovery system, or flare.

We agree with the issue raised by the commenter and are issuing final amendments to the new compliance option, based on the parallel proposal, that refer simply to the use of a "control device." This change allows a tank meeting all of the conditions for exemption under 40 CFR 264.1082(c)(5) and 265.1083(c)(5) of the RCRA rules to comply with the new compliance option using a "control device" as defined in 40 CFR 61.341 of the benzene waste national emission standard (meaning an enclosed combustion device, vapor recovery system, or flare). This change is effective immediately. No risk, environmental, energy, cost, or economic impacts are associated with this action.

## III. Editorial Correction to the Amendments

Since publication of the direct final rule amendments and parallel proposal, we identified one cross-reference error. As proposed, paragraph (a)(3)(iii) of 40 CFR 61.345 allowed the use of safety devices on any container, enclosure, closed-vent system, or control device used to comply with the requirements of "paragraph (e)(1) of this section," which does not exist. We have corrected this citation in today's final rule amendments by referencing the control requirements in 40 CFR 61.345(a)(3)(i).

#### 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 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.

It has been determined that the final rule amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden because the only facility with a total enclosure is already conducting annual verifications and keeping the prescribed records. However, the OMB has previously approved the information collection requirements in the existing national emission standard (40 CFR part 61, subpart FF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0183.

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 purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel 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 are listed in 40 CFR part 9.

##### C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments. For the purposes of assessing the impact of today's final rule amendments on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code ranging from 500 to 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that this action will not impose 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 analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (See 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 impact on all of the small entities subject to the rule. These final rule amendments will not create any new costs for affected firms. In fact, the final rule amendments will relieve the regulatory burden for all facilities, large or small, by broadening the types of control devices that can be used to meet the requirements in RCRA rules for exemption from standards for tanks. This will decrease compliance costs for a few facilities subject to both the RCRA and CAA rules. We have, therefore, concluded that today's final rule amendments will relieve regulatory burden for all small entities that are

subject to both the RCRA and CAA standards for tanks located inside a permanent total enclosure.

##### 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 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 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.

Today's final rule amendments contain no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule amendments do not contain a Federal mandate that may result in expenditures for State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. No costs are attributable to the amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also

determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, the final rule amendments are 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 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."

These 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 facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the 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." These final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own facilities subject to the benzene waste national emission standard. Thus, Executive Order 13175 does not apply to the 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 EPA.

The EPA interprets Executive Order 13045 as applying only to 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 national emission standard for benzene waste operations is based on protection of the public health with an ample margin of safety. However, the amendments to the benzene waste national emission standard have no effect on the level of emissions from benzene waste operations or associated risk and are not subject to Executive Order 13045.

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

The 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 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113; 15 U.S.C. 272 note), directs 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 and analytical procedures, business practices, etc.) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *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 has submitted a report containing the 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 today's **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 25, 2003.

Michael O. Leavitt,  
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

#### **PART 61—[AMENDED]**

■ 1. The authority citation for part 61 continues to read as follows:

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

#### **Subpart FF—[AMENDED]**

- 2. Section 61.343 is amended by:
    - a. Revising paragraph (a)(2);
    - b. Adding paragraph (e) introductory text; and
    - c. Adding paragraph (e)(2).
- The revisions and additions read as follows:

#### **§61.343 Standards: Tanks.**

(a) \* \* \*

(2) The owner or operator must install, operate, and maintain an enclosure and closed-vent system that routes all organic vapors vented from the tank, located inside the enclosure, to a control device in accordance with the requirements specified in paragraph (e) of this section.

\* \* \* \* \*

(e) Each owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to a control device must meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) \* \* \*

(2) The enclosure must be vented through a closed-vent system to a control device that is designed and operated in accordance with the standards for control devices specified in § 61.349.

\* \* \* \* \*

■ 3. Section 61.345 is amended by revising paragraph (a)(3)(iii) to read as follows:

**§ 61.345 Standards: Containers.**

(a) \* \* \*

(3) \* \* \*

(iii) Safety devices, as defined in this subpart, may be installed and operated

as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (a)(3)(i) of this section.

\* \* \* \* \*

[FR Doc. 03-30163 Filed 12-3-03; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 254****Teacher and Teacher's Aide Placement Assistance Program****AGENCY:** Department of Defense.**ACTION:** Final rule.

**SUMMARY:** This document removes information in Title 32 of the Code of Federal Regulations concerning the Teacher and Teacher's Aide Placement Assistance Program. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

**EFFECTIVE DATE:** February 6, 2003.**FOR FURTHER INFORMATION CONTACT:** L. Bynum or P. Toppings, 703-601-4722.**SUPPLEMENTARY INFORMATION:****List of Subjects in 32 CFR Part 254**

Elementary and secondary education; Government contracts; Government employees; Grant programs-education; Military personnel; Teachers.

**PART 254—[REMOVED]**

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 254 is removed.

Dated: January 29, 2003.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-2821 Filed 2-5-03; 8:45 am]

BILLING CODE 5001-08-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 61**

[FRL-7448-6]

**RIN 2060-AJ87****National Emission Standards for Benzene Waste Operations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Partial withdrawal of direct final rule.

**SUMMARY:** On November 12, 2002, the EPA promulgated amendments to the national emission standards for benzene waste operations as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event that we received any adverse comments on the direct final amendments. Because an adverse comment was received on one provision, we are withdrawing the

corresponding parts of the direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on November 12, 2002.

**DATES:** As of February 6, 2003, the EPA withdraws 40 CFR 61.343(e), introductory text, and withdraws and reserves paragraph (e)(2) published on November 12, 2002 at 67 FR 68526. The remaining provisions published on November 12, 2002, will be effective on February 10, 2003.

**ADDRESSES:** Docket number A-2001-23, containing supporting information used in the development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert B. Lucas, Waste and Chemical Process Group (C439-03), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0884, facsimile number (919) 541-0426, electronic mail address, [lucas.bob@epa.gov](mailto:lucas.bob@epa.gov).

**SUPPLEMENTARY INFORMATION:** On November 12, 2002, we published a direct final rule (67 FR 68526) and a parallel proposed rule (67 FR 68546) amending the national emission standards for benzene waste operations (40 CFR part 61, subpart FF). The amendments clarified the applicability of the standards with respect to fuel gas recovery systems and added new compliance options for tanks and containers based on the requirements in other similar EPA rules for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subparts CC).

We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comment by December 12, 2002 (or by February 18, 2003, if a public hearing was requested), we would publish a timely notice in the *Federal Register* specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received an adverse comment from one commenter on the provisions related to control devices in the new compliance option for tanks equipped with an enclosure in 40 CFR 61.343(e).

Accordingly, we are withdrawing 40 CFR 61.343(e), introductory text, and withdrawing and reserving paragraph (e)(2). These amendments are withdrawn as of February 6, 2003. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The provisions for which we did not receive adverse comment will become effective on February 10, 2003, as provided in the preamble to the direct final rule.

**List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 30, 2003.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 03-2936 Filed 2-5-03; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 03-143; MB Docket No. 02-321, RM-10583]

**Radio Broadcasting Services; Oak Grove, LA****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Charles Crawford, allots Channel 289A to Oak Grove, Louisiana, as the community's second local FM transmission service. See 67 FR 66377, October 31, 2002. Channel 289A can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction 11.3 kilometers (7 miles) east to avoid short-spacing to the license site of Station KVVU, Channel 289C3, Leesville, Louisiana. The reference coordinates for Channel 289A at Oak Grove are 29-43-41 North Latitude and 93-00-05 West Longitude. A filing window for Channel 289A at Oak Grove, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective March 3, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554.





**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 61**

[FRL-7773-5]

RIN 2060-A190

**National Emission Standards for Hazardous Air Pollutants; National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H; Final Amendment—Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; technical correction.

**SUMMARY:** The Environmental Protection Agency published a final rule amending the National Emission Standards for Hazardous Air Pollutants (NESHAPs), which regulate the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H. This document contains corrections to the final regulations, which were effective October 9, 2002. After publication in the *Federal Register* it was discovered that the value in table 2 of Method 114 was incorrect.

**DATES:** *Effective Date:* July 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Thornton-Jones, Center for Waste Management, Radiation Protection Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail: [thornton.eleanor@epa.gov](mailto:thornton.eleanor@epa.gov) or by phone (202) 343-9773.

**SUPPLEMENTARY INFORMATION:****Docket**

All documents relevant to this rulemaking have been placed in Docket A-94-60 in EPA's Air Docket. The Air

Docket is located at 1200 Pennsylvania Avenue, NW., 20460, in room B-102, Mail Code 6102T and is open between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. A reasonable fee may be charged for copying.

**Background**

On September 9, 2002, the Environmental Protection Agency published in the *Federal Register* (65 FR 57159), a final rule amending NESHAPs, which regulate the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) (Subpart H) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H (Subpart I). These regulations require that emissions of radionuclides to the ambient air shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 millirem per year (mrem/yr). Also, for non-DOE Federal facilities, emissions of iodine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr. Regulated facilities demonstrate compliance with the standard by sampling and monitoring radionuclide emissions from all applicable point sources. Historically, radionuclide emissions from point sources are measured in accordance with the American National Standards Institute's (ANSI) "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities," ANSI N13.1-1969. In 1999, the American National Standards Institute substantively revised ANSI N13.1-1969 and renamed it "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," ANSI/HPS N13.1-1999. In 2002, the Agency updated its regulations at 40 CFR part 61, subparts H and I to require the use of ANSI/HPS N13.1-1999 for all applicable newly constructed or modified facilities and imposed additional inspection requirements on existing facilities consistent with the revised ANSI standard.

**Need for Correction**

In 40 CFR part 61, Appendix B, Method 114, table 2, under the listing for "Clean transport lines" the Frequency of Activity Column states "Visible deposits for HEPA-filtered applications. Surface density of 1 g/cm<sup>3</sup>." This should read "Visible deposits for HEPA-filtered applications. Mean mass of deposited material exceeds 1 g/m<sup>2</sup> for other applications." Table 2 used in the Appendix B, Method 114 was originally from the ANSI Standard (ANSI/HPS N13.1-1999 (Docket No. A-94-60, Item II-D-3)); Section 6.4.6 "Cleaning transport lines" explains the value used and the required process involved in cleaning transport lines. This section did not talk in terms of density but in terms of the mass of material deposited.

**List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Radionuclides, Radon, Reporting and recordkeeping requirements.

Dated: June 7, 2004.

Bonnie C. Gitlin,  
Acting Director, Radiation Protection Division.

■ For the reasons set forth in preamble title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 61—[CORRECTED]**

■ 1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7602.

■ 2. In Appendix B to part 61, table 2 in Method 114 is amended by revising the entry for "Clean transport lines" to read as follows:

**Appendix B to Part 61—Test Methods**

\* \* \* \* \*

*Method 114—Test Methods for Measuring Radionuclide Emissions From Stationary Sources*

\* \* \* \* \*

**4. Quality Assurance Methods**

\* \* \* \* \*

