

Approved: June 30, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[OAR-2003-0185; FRL-7938-5]

RIN 2060-AE46

National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: EPA is amending the national emission standards for hazardous air pollutants (NESHAP) for primary copper smelting to correct the monitoring requirements for control systems other than baghouses and venturi wet scrubbers.

DATES: Effective July 14, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR-2003-0185. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR-2003-0185, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Fruh, Emission Standards Division (C439-02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-2837, e-mail address: fruh.steve@epa.gov.

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

Category	NAICS code ¹	Examples of regulated entities
Industry	331411	Primary copper smelters.
Federal government	Not affected.
State/local/tribal government	Not affected.

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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1441 of the NESHAP for primary copper smelting. 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.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final amendments will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). A copy of the final amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

I. Background

We promulgated the NESHAP for primary copper smelting (40 CFR 63, subpart QQQ) on June 12, 2002 (68 FR 40478). The final rule establishes emissions limitations and work practice

standards for primary copper smelters that use batch copper converters and are a major source of hazardous air pollutant (HAP) emissions. We received a petition (included in the docket for today's final amendments) asking us to review the requirements for specific operating parameters that must be monitored when an owner or operator uses a control device other than a baghouse (fabric filter) or a venturi wet scrubber to comply with the rule. Upon review of the monitoring requirements in subpart QQQ, we discovered an error in the regulatory language for the final rule that references the operating parameters to be monitored when a control device other than a baghouse or a venturi wet scrubber is used.

If an owner or operator of a primary copper smelter elects to use a control device other than a baghouse or venturi wet scrubber for an emissions source subject to a particulate emissions limit under the final rule (*e.g.*, use an electrostatic precipitator), the rule requires that the owner or operator continuously monitor and record appropriate operating parameters for the type of control device used to demonstrate compliance with the applicable emissions standard. In such cases, the final rule does not specify the individual operating parameters that

must be monitored. Instead, the owner or operator is required to select specific operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance. During the initial performance test that the owner or operator conducts to demonstrate compliance with the applicable emissions standard, operating limits for each of the selected operating parameters are established on a site-specific basis using the actual operating values for the control device recorded while the performance test is conducted. Continuous compliance with the emissions standard is demonstrated by maintaining the selected operating parameters within the operating limits established during the performance test.

Under the monitoring requirements for control devices other than baghouses or venturi wet scrubbers in 40 CFR 63.1452(d) and 40 CFR 63.1453(e), language referencing the operating parameters for venturi wet scrubbers (*i.e.*, hourly average pressure drop and water flow) was incorrectly included in these paragraphs. In place of the reference to venturi wet scrubbers, the rule language in 40 CFR 63.1452(d) and 40 CFR 63.1453(e) should implement

the monitoring requirements as described above, and reference the operating parameters appropriate for the control device design that the owner or operator has determined to be a representative and reliable indicator of the control device performance.

Today's amendments correct our error by revising the language in 40 CFR 63.1452(d) and 40 CFR 63.1453(e) to reference the appropriate set of control device operating parameters. For cases when a control device other than a baghouse or venturi wet scrubber is used to comply with subpart QQQ, the owner or operator must continuously monitor and record the selected operating parameters appropriate for the control device design according to the requirements in the final rule.

II. Good Cause Findings

Section 553(b) of the Administrative Procedure Act (APA) provides that, when any agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. Similarly, under section 553(d) of the APA, an agency may find that there is good cause to make the rule effective upon publication in the **Federal Register**.

We have determined that there is good cause for making today's amendments final without prior proposal and opportunity for public comment because we are merely correcting an error in the existing rule. This error conflicted with the approach we had taken and explained in the proposed rule. The final rule published on June 12, 2002, gave no explanation that this approach was being changed. In fact, the error resulted in adopting monitoring requirements that have no practical application.

Today's amendments are necessary to establish a monitoring requirement that is applicable to the control option and consistent with the rule as proposed. Notice and public comment on the correcting amendments are unnecessary due to their noncontroversial nature and because they do not substantively change the rule requirements, but rather correct the rule so that it is promulgated as we intended and explained to the public in the original rulemaking process. Therefore, we find that this constitutes good cause under 5 U.S.C. 553(b)(B). We also find, for the same reasons, that good cause exists under APA section 553(d)(3) to make the amendments effective upon publication in the **Federal Register** rather than 30 days later.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), or to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28344, May 22, 2001). This action does not impose any new information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant federal intergovernmental mandate, as described in sections 203 and 204 of UMRA. Also, the final rule amendments do 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 governments, as specified by Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), nor does it have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000). This action does not involve technical standards. EPA's compliance with section 12(d) of the National Technology Transfer Act of 1995 (Public Law No. 104-113; 15 U.S.C. 272 note) has been addressed in the preamble of the underlying final rule (67 FR 40478, June 12, 2002).

The Congressional Review Act (CRA), 5 U.S.C.801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 14, 2005. The EPA will submit a report containing the final 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 amendments in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: July 7, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ 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 QQQ—[Amended]

■ 2. Section 63.1452 is amended by revising paragraph (d) introductory text to read as follows:

§ 63.1452 What are my monitoring requirements?

* * * * *

(d) *Other control devices.* For each control device other than a baghouse or venturi wet scrubber subject to the operating limits for appropriate parameters in §§ 63.1444(h) or 63.1446(e), you must at all times monitor each of your selected parameters using an appropriate CPMS. You must install, operate, and maintain each CPMS according to the equipment manufacturer's specifications and the requirements in paragraphs (d)(1) through (5) of this section.

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■ 3. Section 63.1453 is amended by revising paragraph (e)(2) to read as follows:

§ 63.1453 How do I demonstrate continuous compliance with the emission limitations, work practice standards, and operation and maintenance requirements that apply to me?

* * * * *

(e) * * *

(2) Inspect and maintain each CPMS operated according to § 63.1452(d) and

record all information needed to document conformance with these requirements; and

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