

miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones established by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor in any of the areas described by paragraph (a) of this section unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842-2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842-2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations (14 CFR parts 91 and 99) regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any

vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: December 8, 2005.

**C.D. Wurster,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

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**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL-8009-3]

#### NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amendments to the national emissions standards for hazardous air pollutants (NESHAP) for hazardous waste combustors which were issued October 12, 2005, under section 112 of the Clean Air Act. In that rule, we inadvertently included three new or revised bag leak detection system requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—among implementation requirements taking effect on December 12, 2005, rather than, as intended, after three years when the sources begin complying with the revised emission standards under the NESHAP for hazardous waste combustors. We intended to establish the compliance date for these provisions three years after promulgation—October 14, 2008—because the provisions establish more stringent requirements for Phase I sources, which cannot readily be complied with on short notice, and because these provisions are inextricably tied to the revised emissions standards. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

**DATES:** This direct final rule will be effective on February 17, 2006 without further notice, unless EPA receives adverse written comment by January 18,

2006, or by February 2, 2006 if a public hearing is requested. If adverse comments are received, EPA will publish a timely withdrawal notice in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0022, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov) and [behan.frank@epa.gov](mailto:behan.frank@epa.gov).

- Fax: 202-566-1741.

- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2004-0022, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA-HQ-OAR-2004-0022, EPA West Building, Room B-102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The HQ EPA Docket Center telephone number is (202) 566-1742. 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.

**FOR FURTHER INFORMATION CONTACT:** For more information on this rulemaking, contact Frank Behan at (703) 308-8476, or [behan.frank@epa.gov](mailto:behan.frank@epa.gov), Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

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

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule.	562211	4953	Incinerator, hazardous waste.
	327310	3241	Cement manufacturing, clinker production.
	327992	3295	Ground or treated mineral and earth manufacturing.
	325	28	Chemical Manufacturers.
	324	29	Petroleum Refiners.
	331	33	Primary Aluminum.
	333	38	Photographic equipment and supplies.
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials.
	422	51	Chemical and Allied Products, N.E.C.
	512, 541, 561, 812	73	Business Service, N.E.C.
	512, 514, 541, 711	89	Services, N.E.C.
	924	95	Air, Water and Solid Waste Management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's direct final rule will also be available on the WWW at <http://www.epa.gov/hwcmact>.

*Comments.* We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this issue of the **Federal Register**, we are publishing a separate document that

will serve as the proposal to amend the NESHAP for hazardous waste combustors if adverse comments are filed. If we receive any adverse comments on one or more distinct 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, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

*Judicial Review.* Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of a final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(d)(7)(B) of the CAA, only an objection to the direct 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 direct final rule amendments may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce these requirements.

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**Part One: Overview and Background for This Direct Final Rule***I. What Is the Purpose of This Direct Final Rule?*

Today's notice makes specific changes to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), published October 12, 2005 (70 FR 59402). In that rule, we inadvertently included three new or revised bag leak detection system requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—among implementation requirements taking effect on December 12, 2005, rather than, as intended, after three years when the sources begin complying with the revised emission standards under §§ 63.1219, 63.1220, and 63.1221. We intended to establish the compliance date for these provisions three years after promulgation—October 14, 2008—because the provisions establish more stringent requirements for Phase I sources and these sources will need three years to comply with these more stringent requirements.

*II. What Are the Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II)?*

The final standards for hazardous air pollutants for hazardous waste combustors (HWC) are NESHAP that establish controls on toxic emissions from the burning of hazardous waste in incinerators, cement kilns, lightweight aggregate kilns, liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces. The standards

replace existing NESHAP for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—and establish new NESHAP for Phase II sources—liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces.

These NESHAP create a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112(d) of the Clean Air Act (CAA) requires NESHAP to be based on the performance of the Maximum Achievable Control Technology (MACT). These NESHAP are expected to achieve significant reductions in the amount of hazardous air pollutants being emitted each year by these sources.

Additionally, these NESHAP satisfy our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on these NESHAP is available electronically from the World Wide Web at <http://www.epa.gov/hwcmact>.

**Part Two: Amendments to the HWC NESHAP***I. Compliance Date for Cement Kilns To Use a Bag Leak Detection System*

This amendment establishes an October 14, 2008 compliance date for cement kilns equipped with fabric filters to comply with the bag leak detection system (BLDS) requirements under § 63.1206(c)(8). See amended § 63.1206(a)(1)(i).

The HWC NESHAP revised the bag leak detection system (BLDS) requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—to require cement kilns equipped with a fabric filter to use a BLDS to ensure compliance with the particulate matter and nonmercury metal emission standards. Prior to this revision, only incinerators and lightweight aggregate kilns equipped with a fabric filter were

required to use a BLDS. 64 FR 52827 (September 30, 1999); 67 FR 6967 (February 14, 2002). Cement kilns were subject to an opacity standard in lieu of the BLDS. In the October 12, 2005 HWC NESHAP, however, we concluded that a BLDS provided better compliance assurance than an opacity standard and required cement kilns to use a BLDS in lieu of compliance with the opacity standard. 69 FR at 21346–47. That rule also subjected Phase II sources—liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces—equipped with a fabric filter to the same BLDS requirements.

We intended for cement kilns to begin complying with this new requirement when they begin complying with the revised emission standards under § 63.1220—not later than October 14, 2008. Cement kilns need time to design, install, and address start-up problems with the BLDS. Although a three-year compliance date is appropriate, we were inadvertently silent on this issue in the October 2005 rule, and failed to specify that these provisions would not be effective until the effective date of the new emission standards. Consequently, absent this amendment, the BLDS requirement for cement kilns would be applicable immediately—on December 12, 2005.

We note that § 63.1209(a)(1)(ii)(A and B) indicate that we had intended for cement kilns to comply with the BLDS requirement when they begin complying with § 63.1220. Paragraph (a)(1)(ii)(A) states that cement kilns subject to the emission standards under § 63.1204 continue to be subject to the opacity standard, while paragraph (a)(1)(ii)(B) states that, when complying with the revised emission standards under § 63.1220, only those cement kilns that are not equipped with a BLDS or particulate matter detection system continue to be subject to the opacity standard. Thus, we had intended to subject cement kilns to the BLDS requirements when they begin complying with the revised standards under § 63.1220. Cement kilns must comply with those revised standards by October 14, 2008 unless a time extension is granted under § 63.6(i) or § 63.1213. See § 63.1206(a)(1)(ii).

*II. Compliance Date for the Bag Leak Detection System Excessive Exceedances Notification*

This amendment establishes an October 14, 2008 compliance date for the excessive exceedances notification requirement for bag leak detection systems (BLDS) under § 63.1206(c)(8)(iv). See amended § 63.1206(a)(1)(i).

The October 2005 rule establishes an excessive exceedances notification requirement for bag leak detection systems (BLDS). See § 63.1206(c)(8)(iv). If the alarm level is exceeded for more than five percent of the time in a 6-month block, the source must notify the permitting authority.

We intended for Phase I sources to begin complying with this new requirement when they begin complying with the revised emission standards under §§ 63.1219, 63.1220, and 63.1221—not later than October 14, 2008. Phase I sources need time to install the data logging and recording equipment to aggregate the time that the source is operating when the alarm level is exceeded. Although a three-year compliance date is appropriate, we were inadvertently silent on this issue in the October 2005 rule, and failed to specify that these provisions would not be effective until the effective date of the new emission standards. Consequently, absent this amendment, the excessive exceedances notification requirement would be applicable immediately—on December 12, 2005.

### *III. Compliance Date for the Revised Detection Limit Requirement for Bag Leak Detection Systems*

This amendment establishes an October 14, 2008 compliance date for the revised detection limit requirement for bag leak detection systems (BLDS) under § 63.1206(c)(8)(ii)(A). See amended § 63.1206(a)(1)(i).

The October 2005 rule revised the detection limit for BLDS for Phase I sources to require a 1.0 mg/acm detection limit for the BLDS unless you demonstrate in an alternative monitoring petition under § 63.1209(g)(1) that a higher detection limit would routinely detect particulate matter loadings during normal operations. See § 63.1206(c)(8)(ii)(A). The previous detection limit requirement applicable to Phase I sources allowed a higher detection limit under § 63.1209(g)(1) if you demonstrate “that a higher sensitivity would adequately detect bag leaks.” The revised detection limit requirement is applicable to both Phase I and Phase II sources.

We revised the detection limit requirement as an outgrowth of our reconsideration of the BLDS detection limit for Phase I sources. When investigating whether it was appropriate to continue allowing sources to petition under § 63.1209(g)(1) to use a detector with a detection limit higher than 1.0 mg/acm, we concluded that the basis for approving a higher detection limit should be more prescriptive. 69 FR at

21340. Thus, the October 2005 rule requires the detector to be able to detect increases in normal emissions rather than simply being able to detect bag leaks.

We intended for the revised detection limit requirement to become applicable to Phase I sources when they begin complying with the revised emission standards under §§ 63.1219, 63.1220, and 63.1221—not later than October 14, 2008. Phase I sources that were granted approval under § 63.1209(g)(1) to use a bag leak detector with a detection limit greater than 1.0 mg/acm may be required to resubmit the alternative monitoring petition to document that the detector can detect particulate matter loadings under normal operations. In addition, some sources may be required to upgrade their BLDS to ensure that it can detect particulate matter loadings during normal operations. Although a three-year compliance date is appropriate, we were inadvertently silent on this issue in the October 2005 rule, and failed to specify that these provisions would not be effective until the effective date of the new emission standards. Consequently, absent this amendment, the revised detection limit would be applicable immediately—on December 12, 2005.

### **Part Three: Analytical and Regulatory Requirements**

#### *I. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the direct final amendments do not

constitute a “significant regulatory action” because this action creates no new regulatory requirements that meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

#### *II. Paperwork Reduction Act*

The information collection requirements in the final rule (70 FR 59402, October 12, 2005) were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and assigned OMB control number 2050–0171. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1773.08) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information Collection Strategies Division (ME–2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@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 does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because there is no additional burden on the industry as a result of the direct final rule amendments, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

#### *III. Regulatory Flexibility Act*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today’s action.

For purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in the field.

After considering the economic impacts of today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This action does not create any new regulatory requirements. Rather, they continue to apply existing requirements by delaying the compliance date for new or more stringent requirements. After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

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, 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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed

under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Thus, today's action is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the direct final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's direct final rule amendments are not subject to the requirements of section 203 of the UMRA no new enforceable duty on any State, local or tribal governments or the private sector.

#### *V. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action delays the compliance date of new or more stringent requirements. Thus, Executive Order 13132 does not apply to this rule.

#### *VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (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." This final rule does not have tribal implications, as specified in Executive Order 13175. This action delays the compliance date of new or more stringent requirements. Thus, Executive Order 13175 does not apply to this rule.

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

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 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.

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The rule simply delays the compliance date of new or more stringent requirements.

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

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

#### *IX. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3-17).

Today's rule delays the compliance date of new or more stringent requirements and will not result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

*XI. Congressional Review*

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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific

waste type at two facilities under particular (and, as noted, exceptional) circumstances.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule is effective on February 17, 2006.

**List of Subjects in 40 CFR Part 63**

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

Dated: December 12, 2005.

**Stephen L. Johnson,**  
*Administrator.*

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

**PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.1206 is amended by revising paragraphs (a)(1)(i)(A) and (a)(1)(i)(B)(1) to read as follows:

**§ 63.1206 When and how must you comply with the standards and operating requirements?**

(a) \* \* \* (1) \* \* \* (i) \* \* \* (A)

*Compliance dates for existing sources.* You must comply with the emission standards under §§ 63.1203, 63.1204, and 63.1205 and the other requirements of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213, except:

(1) Cement kilns are exempt from the bag leak detection system requirements under paragraph (c)(8) of this section;

(2) The bag leak detection system required under § 63.1206(c)(8) must be capable of continuously detecting and recording particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter unless you demonstrate under § 63.1209(g)(1) that a higher detection limit would adequately detect bag leaks, in lieu of the requirement for the higher detection limit under paragraph (c)(8)(ii)(A) of this section; and

(3) The excessive exceedances notification requirements for bag leak detection systems under paragraph (c)(8)(iv) of this section are waived.

(B) \* \* \* (1) If you commenced construction or reconstruction of your

hazardous waste combustor after April 19, 1996, you must comply with the emission standards under §§ 63.1203, 63.1204, and 63.1205 and the other requirements of this subpart by the later of September 30, 1999 or the date the source starts operations, except as provided by paragraphs (a)(1)(i)(A)(1) through (3) and (a)(1)(i)(B)(2) of this section. The costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart, between April 19, 1996 and a source's compliance date, are not considered to be reconstruction costs.

\* \* \* \* \*

[FR Doc. 05-24198 Filed 12-16-05; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR-2003-0028, FRL-8009-5]

RIN: 2060-AI72

**List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is amending the list of hazardous air pollutants (HAP) contained in section 112 of the Clean Air Act (CAA) by removing the compound methyl ethyl ketone (MEK) (2-Butanone) (CAS No. 78-93-3). This action is being taken in response to a petition submitted by the Ketones Panel of the American Chemistry Council (formerly the Chemical Manufacturers Association) on behalf of MEK producers and consumers to delete MEK from the HAP list. Petitions to remove a substance from the HAP list are permitted under section 112 of the CAA.

Based on the available information concerning the potential hazards of and projected exposures to MEK, EPA has made a determination pursuant to CAA section 112(b)(3)(C) that there are "adequate data on the health and environmental effects [of MEK] to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects."

**EFFECTIVE DATE:** December 19, 2005.