PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 62.1500 is amended by adding paragraph (b)(2) to read as follows:

§ 62.1500 Identification of plan.

* * * * *

(b) * * *

(2) Revisions to Plan for Implementing the Municipal Waste Combustor Guidelines and New Source Performance Standards, submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and including Connecticut DEP's revised regulation 22a–174–38. Certain provisions of the revised regulation 22a–174–38 submitted with the MWC Plan are stricken from the regulatory text. The stricken provisions include standards for MWC units constructed after September 20, 1994, more stringent mercury emission standards, and shutdown provisions for mass burn refractory MWC units.

* * * * *

[FR Doc. 01–30098 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7114–6]

RIN 2050–AE79

NESHAP: Emergency Extension of the Compliance Date for Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to extend for one year the compliance date for regulations for incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste, promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor ''floors'' and remanded for further proceedings. 255 F.3d at 871. The rules are still in effect, however, because the Court has issued an order (at the request of the parties to the proceeding) which stays issuance of the mandate and vacature does not occur until the Courts issue a mandate. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Rhonda Minnick at 703–308–8771, minnick.rhonda@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Part One: Overview and Background for This Final Rule

I. Regulatory Information

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an 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. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because a change in the compliance date is necessitated by the Court's opinion. There are imminent deadlines which are keyed to the existing compliance date, yet affected sources presently lack information to make necessary compliance decisions. Some immediate change of the compliance date is needed. Thus, notice and public procedure are impracticable. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). EPA also finds that good cause exists under U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

II. What Is the Purpose of This Final Rule?

Today's action extends for one year the compliance date for the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor ''floors'' and remanded for further proceedings. 255 F.3d at 871. ''Vacature'', however, only actually takes effect when the Court issues an order called a mandate. In this case, the Court has stayed issuance of the mandate (until February 14, 2002) in response to a joint motion from all parties to the case requesting such action. The rules thus are still in effect. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

III. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants, pursuant to section 112(d) of the Clean Air Act, to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. 64 FR 52828 (September 30, 1999). These emission standards created 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 emissions standards for hazardous air pollutants to be based on

the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's action, we refer to these three categories collectively as hazardous waste combustors (HWC).

Additionally, the Phase I HWC MACT rule satisfies 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. 64 FR at 52833, 52839–41. 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 the Phase I HWC MACT rule is available electronically from the World Wide Web at *www.epa.gov/hwcmact.*

IV. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the HWC MACT rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 ''Fast Track'' final rule (63 FR 33783). Additionally, specific to the HWC MACT rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the HWC MACT rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 ''Fast Track'' final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA,* 217 F. 3d 861 (D.C. Cir. No. 99–1236). The Court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the Court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the Court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the Court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of § 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in § 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The Court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the HWC MACT rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the HWC MACT rule from the *Code of Federal Regulations* (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

On July 3, 2001, we published a direct final rule (66 FR 35087) and a notice of proposed rulemaking (66 FR 35124) promulgating and proposing thirteen amendments to several compliance, testing, and monitoring provisions of the HWC MACT rule. We promulgated these amendments as direct final rules, with an accompanying proposed rule to supplant these rules in the event we received any adverse comment on the amendments. We subsequently received adverse comment on four of the amendments. On October 15, 2001, we published a withdrawal notice (66 FR 52361) removing those parts of the direct final rule that received adverse comment. The nine amendments for which we did not receive adverse comment became effective on October 16, 2001.

On July 3, 2001, we also issued a separate proposed rule soliciting comment on twenty amendments to several compliance, testing, and monitoring provisions of the HWC MACT rule (66 FR 35126). We will address comments to the proposed rule in the future in a final action.

On July 24, 2001, the D.C. Circuit Court issued an opinion vacating the HWC MACT emission standards known as the ''floors'' and remanded for further proceedings. See *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001). The Court also invited any party to file a motion asking that issuance of the mandate be stayed:

> Because this decision leaves EPA without standards regulating HWC emissions, EPA (or any of the parties to this proceeding) may file a motion to delay issuance of the mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards.

255 F.3d at 872.

Part Two: Rationale for Today's Action

I. Why Is a One-Year Extension of the Compliance Date Needed?

In response to the Court's opinion that the Phase I HWC MACT rule be vacated, the Agency and litigants are investigating options to retain some form of the current rules, or issuing some type of interim revised rules. Notwithstanding those efforts, however, and until the Court issues a mandate putting the opinion into force, sources must continue to comply with the rule. The compliance date for the rule is September 30, 2002, three years after the promulgation date.

To meet that compliance date, sources must take steps to comply with the rule prior to that date, and regulatory officials must respond to many of those actions. For example, sources must have submitted by September 30, 2001 requests to extend the compliance date because of inability to meet the emission standards by that date for reasons beyond their control. Regulatory officials should respond to those requests within 30 days of receipt of a complete application. See §§ 63.1206(b)(4), 63.6(i), and 63.1213. In addition, sources must submit the performance test plan to permit officials for review and approval by March 30, 2002, one year prior to the deadline for conducting the initial comprehensive performance test. See § 63.1206(c) and (e). Most sources were planning to submit their test plan and conduct the test in advance of the deadline to facilitate review and approval of the plan and ensure availability of stack testing personnel.

Given the uncertainty created by the opinion as to what standards will ultimately be in place and when sources will have to comply, it is appropriate to delay the compliance date.[1] Quite

[1] If the Agency were not to promulgate an interim rule prior to the Court's issuance of a mandate

simply, sources are (legitimately) unwilling to make the substantial commitments in time, effort, and capital to comply with standards when they no longer know what those standards will be. We believe a one-year delay of the compliance date is warranted. Many sources reasonably stopped most efforts to comply with the rule when the Court issued its opinion on July 24, 2001 because the rule's status was so uncertain. Further, although the Agency plans to promulgate interim rules prior to the Court's issuance of the vacature mandate, the interim rules will not be promulgated until approximately February 14, 2002. That hiatus would justify a six month delay in the compliance date, but the requirements of an interim rule will differ from the current rule to address concerns of litigants and the Court. Thus, sources may need additional time to address such differences. Consequently, we believe a one-year delay in the compliance date is within the range of time extensions that are appropriate.

Should EPA promulgate replacement rules, those rules would, of course, have their own compliance dates (to be determined as part of that rulemaking). Our action today deals only with the status of the existing rule, which date clearly needs to change as a result of the *Cement Kiln Recycling Coalition* opinion.

To implement the one-year delay in the compliance date, we are revising dates in several regulatory provisions. We are revising the compliance date provided by § 63.1206(a)(1) from September 30, 2002 to September 30, 2003. In addition, we are making conforming revisions to several paragraphs that establish deadlines based on the compliance date.

II. Why Is This Rule Issued Without Notice and Opportunity for Public Comment?

EPA finds that there is good cause to issue this rule without prior notice and opportunity for comment (although EPA notes that all of the litigants in the *Cement Kiln Recycling Coalition* proceedings have had actual notice of this action as a result of the on-going discussions following issuance of that opinion, and have had the opportunity to present their views to the appropriate EPA officials). First, as explained above, source owners and operators presently lack the information to make necessary compliance decisions: they do not know what the standards will be, or if there will be any national standards at all. The only thing that is clear is that the current rules, as a result of the Court's opinion and vacature remedy, will require some alteration. Yet there are imminent deadlines (September, 2001 and March, 2002) which are keyed to the September, 2002 compliance date. Some immediate change of the compliance date is thus needed. Second, EPA regards a change in the compliance date as necessitated by the Court's opinion in any case, and thus that this action is essentially non-discretionary. For all of these reasons, EPA finds that there is good cause to issue this rule without notice and opportunity for comment pursuant to 5 U.S.C. section 553(b)(B) (which applies to CAA rulemakings, see section 307(d)(1), final sentence), as well as good cause for this rule to take effect immediately pursuant to 5 U.S.C. section 553(d).

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—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;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is not a ''significant regulatory action''and is therefore not subject to OMB review.

The aggregate annualized compliance costs for this final rule are less than $100 million. Furthermore, this rule is not expected to 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. The benefits to human health and the environment resulting from today's action have not been monetized but are deemed to be less than $100 million per year.

A. Why Is This Final Rule Necessary?

See Part Two, Section I of this Preamble.

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, ''to the extent permitted by law, and where applicable.'' The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s). The consideration of non-regulatory alternatives is not applicable to today's final rule.

C. What Regulatory Options Were Considered?

Alternative regulatory options are not applicable to this action.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC–NAICS code(s) the firm is primarily classified in; (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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and

vacating the rule, today's action to delay the compliance date for one year becomes moot. This is because vacature of the emission standards would as a practical matter vacate the compliance date for those standards.

operated and is not dominant in its field.

Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Part Two, Section II), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. 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 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. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, the Agency does not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

IV. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. 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 (OSWER) 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). We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any single year. The final rule may result in modified annualized incremental costs from those presented in the Assessment[2], due primarily to baseline adjustments over the one year extension period. However, no significant cost adjustments are anticipated. Because the Agency has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Part Two, Section II of this action), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

VI. 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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 the Order. Thus, Executive Order 13132 does not apply to this rule.

VII. Executive Order 13175: Consultation and Coordination with Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

[2] ''Assessment of Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule,'' U.S. EPA, July 1999.

This final rule does not have tribal implications. It 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, as specified in the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

VIII Executive Order 13211: Energy Impact Analysis

Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse affects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule is not likely to have any significant adverse impact on factors affecting energy supply. We believe that Executive Order 13211 is not relevant to this action.

IX. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because there are no paperwork requirements as part of this final rule, we are not required to prepare an Information Collection Request in support of today's action.

X. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 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 the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

XI. The Congressional Review Act (5 U.S. C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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 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 (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding. We have established an effective date of December 6, 2001.

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**. 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: November 29, 2001.

Christine Todd Whitman,

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:

a. Revising paragraphs (a)(1), (a)(2)(ii), and (a)(4).

b. Revising paragraphs (b)(6)(i), (b)(7)(i)(B), and (b)(7)(ii)(B).

The revisions read as follows:

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

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards 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.

(2) * * *

(ii) For a standard in this subpart that is more stringent than the standard proposed on April 19, 1996, you may achieve compliance no later than September 30, 2003 if you comply with the standard proposed on April 19, 1996 after September 30, 1999. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after September 30, 1999. As provided by § 63.6(b)(7), such sources must comply with this subpart at startup.

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2003, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(6) * * *

(i) If a DRE test performed after March 30, 1999 is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during those DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is a test that was used to support successful issuance or reissuance of an operating permit under part 270 of this chapter.

* * * * *

(7) * * *

(i) * * *

(B) You may use DRE testing performed after March 30, 1999 for purposes of issuance or reissuance of a RCRA permit under part 270 of this chapter to document conformance with the DRE standard if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(ii) * * *

(B) You may use DRE testing performed after March 30, 1999 for purposes of issuance or reissuance of a RCRA permit under part 270 of this chapter to document conformance with

the DRE standard in lieu of DRE testing during the initial comprehensive performance test if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

* * * * *

3. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i)(A).

b. Revising paragraph (l) introductory text by designating the text after the heading as (l)(1) and revising newly designated paragraph (l)(1).

The revision read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Initiated after March 30, 1999;

* * * * *

(l) Failure of performance text—(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2003 (or a later compliance date approved under § 63.6(i)).

* * * * *

[FR Doc. 01–30267 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–002; FRL–7113–6]

Clean Air Act Full Approval of Operating Permits Program; State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating full approval of the Operating Permit Program submitted by the Texas Natural Resource Conservation Commission (TNRCC or Commission) based on the revisions submitted on June 12, 1998, and June 1, 2001, which satisfactorily address the program deficiencies identified in EPA's June 7, 1995, and June 25, 1996, Interim Approval (IA) Rulemakings. *See* 60 FR 30037 and 61 FR 32693. The TNRCC revised its program to satisfy the conditions for full approval, and EPA proposed full approval in the **Federal Register** on October 11, 2001 (66 FR 51895). This notice only takes action on issues related to correcting interim approval issues. We will address other issues at a later date as described in sections V.C and V.D of this document.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of documents relevant to this action are available inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two days in advance.

Environmental Protection Agency, Region 6, Air Permitting Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permitting Section (6PD-R), EPA, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212 or e-mail at *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

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I. What Is the Operating Permit Program?

Title V of the Clean Air Act (the ''Act'') Amendments of 1990 required all States to develop Operating Permit Programs that meet certain Federal criteria. In implementing the title V Operating Permit Programs, permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Act. The focus of the title V Operating Permit Program is to facilitate compliance and improve enforcement by issuing each source a permit that consolidates all of the applicable requirements of the Act into a federally enforceable document. This consolidation of all applicable requirements enables the source, the public, and the permitting authority to readily determine which of the Act's requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution as defined by title V and certain other sources specified in the Act or in EPA's implementing regulations. This includes all sources regulated under the acid rain program, regardless of size, which must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOC), carbon monoxide (CO), lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM–10); those that emit 10 tpy of any single hazardous air pollutant (HAP) specifically listed under the Act; or those that emit 25 tpy or more of a combination of HAP. In areas that are not meeting the National Ambient Air Quality Standards for ozone, CO, or PM–10, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tpy or more of VOC or NO_X.

II. What Is Being Addressed in This Document?

Where a title V Operating Permit Program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, we granted IA contingent on the State revising its program to correct the deficiencies. Because Texas's Operating Permit Program substantially, but not fully, met the requirements of part 70, we granted a source category-limited IA to the program in a rulemaking published on June 25, 1996 (61 FR 32693). The IA notice stipulated numerous conditions that had to be met in order for the State's program to receive full approval. Texas submitted revisions to its interim approved Operating Permit Program dated June 12, 1998, and June 1, 2001. Texas also submitted supplementary information to EPA on August 22, 2001, August 23, 2001, and September 20, 2001. On November 5, 2001, EPA received a Statement by the Attorney General of Texas stating that the laws of Texas provide adequate authority to carry out all aspects of the program.

On October 11, 2001 (66 FR 51895), we proposed full approval of Texas's title V Operating Permits Program based on our determination that Texas had corrected the IA deficiencies identified in our June 7, 1995 and June 25, 1996 actions. On November 13, 2001, we received comments on our proposal. Our response to the comments are in section III of this action.