[Federal Register: October 13, 2004 (Volume 69, Number 197)]
[Rules and Regulations]
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[DOCID:fr13oc04-11]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC-2004-0004; FRL-7826-2]

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On April 14, 2003, pursuant to section 112 of the Clean Air Act (CAA), the EPA issued national emission standards to control hazardous air pollutants emitted from pushing, quenching, and battery stacks at new and existing coke oven batteries. This action amends the parametric operating limits and associated compliance provisions for capture systems used to control emissions from pushing. This action also amends the requirements for mobile scrubber cars that capture emissions which occur during pushing and travel.

DATES: The direct final rule amendments will be effective on January 11, 2005, unless we receive significant adverse comments by November 12, 2004, or by November 29, 2004 if a public hearing is requested. If such comments are received, we will publish a timely withdrawal in the Federal Register indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of the final amendments for which we do not receive adverse comment will become effective on January 11, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OGC-2004-0004, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Follow the on-line instructions for submitting comments.

Agency Website: http://www.epa.gov/edocket. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferr for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: a-and-r-docket@epa.gov.

Fax: (202) 566-1741.

Mail: Proposed Settlement Agreement in AISI/ACCCI Coke Oven Environmental Task Force v. U.S. EPA, No. 03-1167 (DC Cir.) Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

Hand Delivery: Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OGC-2004-0004. 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 www.epa.gov/edocket , including any personal information provided, unless the comment includes information claimed to be Confidential Business In restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ``anonymous access'' systems, 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 EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at http://www.epa.gov/edocket.

Although listed in the index, some information is not publicly available, i.e., CBI 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 docket entitled ``Proposed Settlement Agreement in AISI/ACCCI Coke Oven Environmental Task Force v. U.S. EPA, No. 03-1167 (DC Cir.),'' Docket ID No. OGC-2004-0004, 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 Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lula Melton, Emission Standards Division, Office of Air Quality Planning and Standards (C439-02), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-2910, fax number (919) 541-3207, e-mail address: melton.lula@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	NAICS code \1\	Examples of regulated entities
Industry	331111, 324199...	Coke plants and integrated iron and steel mills.
Federal government	...	Not affected.

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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 would be regulated by this action, you should examine the applicability criteria in Sec. 63.7281 of the national emission standards for hazardous air pollutants (NESHAP) for coke ovens: Pushing, quenching, and battery stacks. 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.

B. What Should I Consider as I Prepare My Comments for EPA?

Do not submit information containing CBI to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OGC-2004-0004. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's final amendments is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, 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 a control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

D. What Are the Judicial Review Requirements?

Under section 307(b)(1) of the CAA, judicial review of the final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 13, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

E. Why Are We Publishing the Amendments as a Direct Final Rule?

We are publishing the amendments as a direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules

section of this Federal Register, we are publishing a separate document that will serve as the proposal for the amendments contained in the direct final rule in the event that significant adverse comments are filed. If we receive any significant 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 based on the proposed rule (should we decide to issue a final rule). We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

F. How Is This Document Organized?

The information presented in this preamble is organized as follows:

II. Background
III. Summary of the Final Amendments
A. What changes are we making as a result of the settlement agreement?
B. What other changes are we making?
IV. Summary of Environmental, Energy, and Economic Impacts
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

II. Background

On April 14, 2003 (68 FR 18008), we issued national emission standards for the control of hazardous air pollutants (HAP) from pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The NESHAP implements section 112(d) of the CAA by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).\1\

\1\ The final rule should not be confused with the MACT standards for coke oven doors, lids, offtake systems, and charging which are the subject of special statutory provisions (CAA section 112(d)(8), 112(i)(8)). The EPA adopted MACT standards for those emission points in 1993 (58 FR 57898, October 27, 1993), and recently proposed residual risk standards pursuant to CAA section 112(f)(2) for these sources (69 FR 68338, August 9, 2004).

After publication of the final rule, the American Iron and Steel Institute (AISI)/American Coke and Coal Chemicals Institute (ACCCI) Coke Oven Environmental Task Force (COETF) filed a petition for review challenging the final standards (AISI/ACCCI Coke Oven Environmental Task Force v. U.S. Environmental Protection Agency, no. 03-1167, D.C. Cir.). The petitioners raised issues concerning:

The provisions requiring owners or operators of coke plants having a pushing emission control device to install, operate and maintain devices to monitor daily average fan motor amps, (or volumetric flow rate at the inlet of the control device and maintain daily average volumetric flow rate) at or above minimum levels established during initial performance tests. These provisions are included in 40 CFR 63.7290, 63.7323(c), 63.7326(a)(4),

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63.7330(d), 63.7331(g) and (h), and 63.7333(d).

The provisions requiring monthly inspections of pressure sensors, dampers, damper switches and other equipment important to the performance of the total emissions capture system which also require that a facility's operation and maintenance plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection. These provisions are included in 40 CFR 63.7300(c)(1).

The EPA and the petitioners anticipate that certain amendments to the final rule will resolve COETF's concerns. These amendments are set out in attachment A to a proposed settlement agreement between EPA and COETF. In accordance with section 113(g) of the CAA, EPA published a notice of the proposed settlement agreement (69 FR 31372, June 3, 2004) and provided a 30-day comment period which ended July 6, 2004. The EPA received no comments on the proposed settlement agreement. Under the terms of the proposed settlement agreement, EPA must submit proposed amendments for publication in the Federal Register within 90 days after review of public comments received in response to the notice of the settlement agreement. Within 120 days after the close of the comment period on the proposal, EPA must submit for publication in the Federal Register a notice setting forth the Administrator's final decision on

the issues covered by the proposal.

Concurrent with development of the proposed settlement agreement, a coke manufacturer constructing a new non-recovery plant noticed a gap in the promulgated rule. The new source is being constructed with a type of emission control system that is not addressed in the final rule. Therefore, the source requested EPA to develop an appropriate emission limit for that control system. In response, we are broadening the applicability of an existing emissions limit to include the control system and are adding appropriate implementation and compliance provisions.

III. Summary of the Final Amendments

A. What Changes Are We Making in Response to the Settlement Agreement?

The petitioners argued that the operating limit in 40 CFR 63.7290(3)(i) of the final rule for capture systems applied to pushing emissions (which requires the plant to maintain the daily average fan motor amperage at or above a certain level) was inappropriate for systems that did not use an electric motor to drive the fan. We agree with the petitioners because there are a few fans that are not powered by an electric motor. In response, we are amending the operating limit in 40 CFR 63.7290(b)(3)(i) to state that the requirement applies to capture systems that use an electric motor to drive the fan. We are adding a new operating limit in 40 CFR 63.7290(b)(3)(ii) that is appropriate for assessing the proper operation of a capture system that does not use an electric motor to drive the fan. The new operating limit requires the owner or operator to maintain the daily average static pressure at the inlet to the control device at an equal or greater vacuum than the level established during the initial performance test, or to maintain the daily average fan revolutions per minute (RPM) at or above the minimum level established during the initial performance test. We also renumbered the existing operating limit for the daily average volumetric flow rate in 40 CFR 63.7290(b)(3)(ii) as 40 CFR 63.7290(b)(3).

We also are adding requirements to the final rule for demonstrating initial and continuous compliance with the new operating limit for daily average static pressure or fan RPM. To establish the operating limit, a new procedure in 40 CFR 63.7323(c)(3) requires that the static pressure at the inlet of the control device or fan RPM during each push sampled for each particulate matter (PM) test run during the performance test be measured and recorded. The operating limit for static pressure is the minimum vacuum recorded during any of the three runs that meets the emission limit. The operating limit for fan RPM is the lowest RPM recorded during any of the three runs that meets the emission limit. To demonstrate initial compliance, a new provision in 40 CFR 63.7326(a)(4) requires that the owner or operator have a record of the static pressure at the inlet of the control device or fan RPM measured during the performance test. To demonstrate continuous compliance, 40 CFR 63.7330(d) requires the owner or operator to monitor the static pressure or the fan RPM at all times according to the requirements in 40 CFR 63.7331(i), which requires a device to measure static pressure at the inlet of the control device or the fan RPM. A new provision in 40 CFR 63.7333(d) requires the owner or operator to maintain the daily average static pressure at the inlet to the control device at an equal or greater vacuum than established during the initial or subsequent performance test, or to maintain the daily average fan RPM at or above the minimum level established during the initial or subsequent performance test. The owner or operator also must check the static pressure or fan RPM at least every 8 hours to verify the daily average static pressure at the inlet to the control device, or the daily average fan RPM, is at or above the required values and to record the results of each check. We also made conforming amendments in each of the affected sections to account for changes in the regulatory citations.

The petitioners also argued that the provision in 40 CFR 63.7300(c)(1), which requires that the operation and maintenance plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection, is unreasonable. We agree because there are a few repairs that may require more than 30 days to complete. Therefore, we are replacing the provision to complete all repairs within 30 days after the defect or deficiency is found to allow more time when necessary. If the repairs cannot be completed within 30 days, the owner or operator must estimate the number of days in which repairs can be completed. We developed provisions for two additional situations (i.e., one for repairs that can be made within 60 days and one for repairs that will take longer than 60 days).

If repairs can be completed within 60 days from the date that the problem is discovered, the owner or operator must submit a written notice to the permitting authority within 30 days after the date that the problem is discovered. The notice must contain specific information, including a description of the defect or deficiency, the steps needed to correct the problem, the interim steps needed to mitigate the emissions impact of the defect or deficiency, and an explanation of why the repairs cannot be completed within 30 days from the date that the problem is discovered.

If the repairs cannot be completed within 60 days, the owner or operator must submit a written request to the permitting authority for an extension of time to complete the repairs. The owner or operator must submit this request to the permitting authority within 45 days after the date the defect or deficiency is discovered. The amendments require that this request include the information required for the previous notice, along with a detailed proposed schedule for completing the repairs and a request for approval of the proposed repair schedule.

The permitting authority may consider all relevant factors in deciding whether to approved or deny the

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request, including feasibility and safety, and may request modifications to the proposed schedule. If the permitting authority approves the request, the approved schedule must provide for completion of repairs as soon as practicable. This new requirement provides flexibility for unforeseen circumstances but also requires accountability for making needed repairs.

B. What Other Changes Are We Making?

A new non-recovery coke plant now under construction will use flat car pushing along with a mobile control system (closed hood capture system vented to a multicyclone) to control PM emissions during pushing and travel to the quench tower. There are no test data for the proposed control system because no such system has been built. Consequently, we cannot develop an alternative emissions limit. However, the existing emission limit of 0.04 pound per ton of coke in 40 CFR 63.7290(a)(4), which applies to mobile scrubber cars that capture emissions during travel, covers a comparable situation. Therefore, we are changing the applicability of the limit from ``mobile scrubber car'' to ``mobile control device.'' Thus, the existing limit will apply to any type of mobile control device applied to pushing emissions that also captures emissions during travel at a new or existing coke oven battery.

While the existing rule contains monitoring provisions for scrubbers, baghouse, and capture systems, it does not include requirements applicable to multicyclones. Therefore, we have added an operating limit to the final rule, along with requirements for demonstrating initial and continuous compliance. Based on information in EPA's 1998 ``Compliance Assurance Monitoring Technical Guidance Document'' (available at http://www.epa.gov/ttn/emc/cam), we selected pressure drop as the indicator of proper control device For multicyclones, control efficiency is a function of inlet velocity, and changes in velocity result in changes in pressure drop across the device. If the inlet velocity exceeds a certain level, turbulence becomes excessive and control efficiency decreases. Therefore, the operating limit requires the owner or operator to maintain the pressure drop at or below the level established during the initial performance test. A continuous parameter monitoring system (CPMS) is required to measure and record the pressure drop across the device. We also added rule provisions for establishing an operating limit; demonstrating initial compliance; installing, operating, and maintaining the CPMS; and demonstrating continuous compliance with the parametric operating limit.

IV. Summary of Environmental, Energy, and Economic Impacts

The final rule amendments will have no effect on environmental, energy, or non-air health impacts because none of the changes affect the stringency of the existing emission limits. No costs or economic impacts are associated with the amendments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ``significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ``significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this action is not a ``significant regulatory action'' under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The costs of the information collection requirements associated with the provisions related to the settlement agreement do not increase the existing burden estimates for the final rule. The OMB has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart CCCCC) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0521, EPA ICR number 1995.02. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC

20460 or by calling (202) 566-1672.

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 part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For the purposes of assessing the impacts of today's final amendments on small entities, small entity is defined as: (1) A small business having no more than 1,000 employees, as defined by the Small Business Administration for NAICS codes 331111 and 324199; (2) a government 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 that is not dominant in its field.

After considering the economic impacts of today's final amendments on small entities, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small

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entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ``which minimize any significant economic impact of the proposed rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We believe there will be a positive impact on small entities because the final rule amendments add new compliance provisions to increase flexibility. These changes are voluntary and do not impose new costs. We have, therefore, concluded that today's final rule amendments will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ``Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final amendments do 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 to the private sector in any 1 year. No new costs are attributable to the final amendments. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ``meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the final rule amendments. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ``economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because the final rule (and these amendments) are based on technology performance and not on health or safety risks.

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

These final amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed amendments, Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113; 15 U.S.C 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB,

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explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA's compliance with section 112(d) of the NTTAA has been addressed in the preamble to the existing rule (68 FR 18025, April 14, 2003). The final rule amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA 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). The final rule

amendments will be effective on January 11, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: October 4, 2004.
Michael O. Leavitt,
Administrator.

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For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63--[AMENDED]

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

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

Subpart CCCCC--[Amended]

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2. Section 63.7290 is amended by revising paragraphs (a)(4), (b) introductory text, and (b)(3) and by adding new paragraph (b)(4) to read as follows:

Sec. 63.7290 What emission limitations must I meet for capture systems and control devices applied to pushing emissions?

(a) * * *
(4) 0.04 lb/ton of coke if a mobile control device that captures emissions during travel is used.
(b) You must meet each operating limit in paragraphs (b)(1) through (4) of this section that applies to you for a new or existing coke oven battery.
* * * * *
(3) For each capture system applied to pushing emissions, you must maintain the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test; or
(i) For each capture system that uses an electric motor to drive the fan, you must maintain the daily average fan motor amperes at or above the minimum level established during the initial performance test; and
(ii) For each capture system that does not use a fan driven by an electric motor, you must maintain the daily average static pressure at the inlet to the control device at an equal or greater vacuum than the level established during the initial performance test or maintain the daily average fan revolutions per minute (RPM) at or above the minimum level established during the initial performance test.
(4) For each multicyclone, you must maintain the daily average pressure drop at or below the minimum level established during the initial performance test.

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3. Section 63.7300 is amended as follows:
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a. Removing the third (last) sentence in paragraph (c)(1) and adding in its place a new sentence; and
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b. Adding new paragraphs (c)(1)(i) and (ii).

Sec. 63.7300 What are my operation and maintenance requirements?

* * * * *
(c) * * *
(1) * * * In the event a defect or deficiency is found in the capture system (during a monthly inspection or between inspections), you must complete repairs within 30 days after the date that the defect or deficiency is discovered except as specified in paragraphs (c)(1)(i) and (ii) of this section.
(i) If you determine that the repairs can be completed within 60 days, you must submit a written notice that must be received by the permitting authority within 30 days after the date that the defect or deficiency is discovered. Your notice must contain a description of the defect or deficiency, the steps needed and taken to correct the problem, the interim steps being taken to mitigate the emissions impact of the defect or deficiency, and an explanation of why the repairs cannot be completed within 30 days. You must then complete the repairs within 60 days after the date that the defect or deficiency is discovered.
(ii) In those rare instances when repairs cannot be completed within 60 days, you must submit a written request for extension of time to complete the repairs. The request must be received by the permitting authority not more than 45 days after the date that the defect or deficiency is discovered. The request must contain all of the information required for the written notice described in paragraph (c)(1)(i) of this section, along with a detailed proposed schedule for completing the repairs and a request for approval of the proposed

repair schedule. The permitting authority may consider all relevant factors in deciding whether to approve or deny the request (including feasibility and safety). Each approved schedule must provide for completion of repairs as expeditiously as practicable, and the permitting authority may request modifications to the proposed schedule as part of the approval process.
* * * * *

0
4. Section 63.7323 is amended as follows:
0
a. Revising paragraph (c);
0
b. Redesignating paragraph (d) as (e);
0
c. Adding new paragraph (d); and
0
d. Revising newly designated paragraph (e) introductory text and revising newly designated paragraph (e)(3).

Sec. 63.7323 What procedures must I use to establish operating limits?

* * * * *
(c) For a capture system applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit according to the procedures in paragraphs (c)(1), (2), or (3) of this section.
(1) If you elect the operating limit in Sec. 63.7290(b)(3) for volumetric flow rate, measure and record the total volumetric flow rate at the inlet of the control device during each push sampled for each particulate matter test run. Your operating limit is the lowest volumetric flow rate recorded during any of the three runs that meet the emission limit.
(2) If you elect the operating limit in Sec. 63.7290(b)(3)(i) for fan motor amperes, measure and record the fan motor amperes during each push sampled for each particulate matter test run. Your operating limit is the lowest fan motor amperes recorded during any of the three runs that meet the emission limit.
(3) If you elect the operating limit in Sec. 63.7290(b)(3)(ii) for static pressure or fan RPM, measure and record the static pressure at the inlet of the control device or fan RPM during each push sampled for each particulate matter test

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run. Your operating limit for static pressure is the minimum vacuum recorded during any of the three runs that meets the emission limit. Your operating limit for fan RPM is the lowest fan RPM recorded during any of the three runs that meets the emission limit.
(d) For a multicyclone applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit for pressure drop according to the procedures in paragraphs (d)(1) and (2) of this section.
(1) Using the CPMS required in Sec. 63.7330(f), measure and record the pressure drop for each particulate matter test run during periods of pushing. A minimum of one pressure drop measurement must be obtained for each push.
(2) Compute and record the average pressure drop for each test run. Your operating limit is the highest average pressure drop value recorded during any of the three runs that meet the emission limit.
(e) You may change the operating limit for a venturi scrubber, capture system, or mobile control device that captures emissions during pushing if you meet the requirements in paragraphs (e)(1) through (3) of this section.
* * * * *
(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (d) of this section.

0
5. Section 63.7326 is amended as follows:
0
a. Revising paragraph (a)(1)(iii);
0
b. Revising paragraphs (a)(4)(i) and (a)(4)(ii);
0
c. Adding paragraph (a)(4)(iii); and
0
d. Adding paragraph (a)(5).

Sec. 63.7326 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) * * *
(1) * * *
(iii) 0.04 lb/ton of coke if a mobile control device that captures emissions during travel is used.
* * * * *
(4) * * *
(i) If you elect the operating limit in Sec. 63.7290(b)(3) for volumetric flow rate, you have a record of the total volumetric flow rate at the inlet of the control device measured during the performance

test in accordance with Sec. 63.7323(c)(1); or
(ii) If you elect the operating limit in Sec. 63.7290(b)(3)(i) for fan motor amperes, you have a record of the fan motor amperes during the performance test in accordance with Sec. 63.7323(c)(2); or
(iii) If you elect the operating limit in Sec. 63.7290(b)(3)(ii) for static pressure or fan RPM, you have a record of the static pressure at the inlet of the control device or fan RPM measured during the performance test in accordance with Sec. 63.7323(c)(3).
(5) For each multicyclone applied to pushing emissions, you have established an appropriate site-specific operating limit and have a record of the pressure drop measured during the performance test in accordance with Sec. 63.7323(d).
* * * * *

0
6. Section 63.7330 is amended by revising paragraphs (d) and (e) and by adding paragraph (f) to read as follows:

Sec. 63.7330 What are my monitoring requirements?

* * * * *
(d) For each capture system applied to pushing emissions, you must at all times monitor the volumetric flow rate according to the requirements in Sec. 63.7331(g), the fan motor amperes according to the requirements in Sec. 63.7331(h), or the static pressure or the fan RPM according to the requirements in Sec. 63.7331(i).
(e) For each by-product coke oven battery, you must monitor at all times the opacity of emissions exiting each stack using a COMS according to the requirements in Sec. 63.7331(j).
(f) For each multicyclone applied to pushing emissions, you must monitor at all times the pressure drop using a CPMS according to the requirements in Sec. 63.7331(k).

0
7. Section 63.7331 is amended as follows:
0
a. Revising paragraphs (g) and (h);
0
b. Redesignating paragraph (i) as (j) and revising newly designated paragraph (j) introductory text;
0
c. Adding new paragraph (i); and
0
d. Adding new paragraph (k).

Sec. 63.7331 What are the installation, operation, and maintenance requirements for my monitors?

* * * * *
(g) If you elect the operating limit in Sec. 63.7290(b)(3) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the total volumetric flow rate at the inlet of the control device.
(h) If you elect the operating limit in Sec. 63.7290(b)(3)(i) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the fan motor amperes.
(i) If you elect the operating limit in Sec. 63.7290(b)(3)(ii) for a capture system applied to pushing emissions, you must install, operate and maintain a device to measure static pressure at the inlet of the control device or the fan RPM.
(j) For each by-product coke oven battery, you must install, operate, and maintain a COMS to measure and record the opacity of emissions exiting each stack according to the requirements in paragraphs (j)(1) through (5) of this section.
* * * * *
(k) For each multicyclone applied to pushing emissions, you must install, operate, and maintain CPMS to measure and record the pressure drop across each multicyclone during each push according to the requirements in paragraphs (b) through (d) of this section except as specified in paragraphs (e)(1) through (3) of this section.

0
8. Section 63.7333 is amended as follows:
0
a. Revising paragraph (d);
0
b. Revising paragraph (e)(2); and
0
c. Adding new paragraph (h).

Sec. 63.7333 How do I demonstrate continuous compliance with the emission limitations that apply to me?

* * * * *
(d) For each capture system applied to pushing emissions and subject to the operating limit in Sec. 63.7290(b)(3), you must demonstrate continuous compliance by meeting the requirements in paragraph (d)(1), (2), or (3) of this section:
(1) If you elect the operating limit for volumetric flow rate in Sec. 63.7290(b)(3):
(i) Maintaining the daily average volumetric flow rate at the inlet

of the control device at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the volumetric flow rate at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(2) If you elect the operating limit for fan motor amperes in Sec. 63.7290(b)(3)(i):

(i) Maintaining the daily average fan motor amperages at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the fan motor amperage at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(3) If you elect the operating limit for static pressure or fan RPM in Sec. 63.7290(b)(3)(ii):

(i) Maintaining the daily average static pressure at the inlet to the control device at an equal or greater vacuum

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than established during the initial or subsequent performance test or the daily average fan RPM at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the static pressure or fan RPM at least every 8 hours to verify the daily average static pressure at the inlet to the control device is at an equal or greater vacuum than established during the initial or subsequent performance test or the daily average fan RPM is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(e) * * *

(2) Operating and maintaining a COMS and collecting and reducing the COMS data according to Sec. 63.7331(j).

* * * * *

(h) For each multicyclone applied to pushing emissions and subject to the operating limit in Sec. 63.7290(b)(4), you must demonstrate compliance by meeting the requirements in paragraphs (h)(1) through (3) of this section.

(1) Maintaining the daily average pressure drop at a level at or below the level established during the initial or subsequent performance test.

(2) Operating and maintaining each CPMS according to Sec. 63.7331(k) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop according to Sec. 63.7331(e)(1) through (3).

[FR Doc. 04-22871 Filed 10-12-04; 8:45 am]
BILLING CODE 6560-50-P