

PROPOSED RULES

Air pollutants, hazardous; national emission standards: Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, etc., 64002

Vol. 60 No. 239 Wednesday, December 13, 1995 p 64002 (Proposed Rule) 1/648

40 CFR Part 63

[AD-FRL-5344-4]

National Emission Standards for Hazardous Air Pollutants for: Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Ethylene Oxide Commercial Sterilization and Fumigation Operations; Perchloroethylene Dry Cleaning Facilities; and Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: amendment.

SUMMARY: This action proposes amendments to certain sections of the following promulgated standards: "National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Final Rule" (subpart N); "National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations" (subpart O); "National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities" (subpart M); and "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting" (subpart X). Except in the case of subpart X, today's action proposes to amend the Final Rules' requirement that nonmajor sources obtain title V operating permits. The action being taken today will substantially reduce the unnecessary and undue regulatory burden for States and local agencies, EPA Regional Offices, and the industry during a time when tremendous resources are necessary for the initial implementation of the title V permit program. Because sources are still required to meet all applicable emission control requirements established by the respective MACT standards, this action is not expected to have adverse environmental results. The amendment to subpart X will confirm that existing nonmajor secondary lead smelting facilities will be subject to title V permit requirements.

DATES: Comments. Comments must be received on or before January 12, 1996, unless a hearing is requested by December 26, 1995. If a hearing is requested, written comments must

be received by January 29, 1996.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than December 26, 1995. If a hearing is held, it will take place on December 28, 1995, beginning at 10:00 a.m.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A-88-02 (subpart N), or Attention Docket No. A-88-03 (subpart O), or Attention Docket No. A-95-16 (subpart M), or Attention Docket No. A-92-43 (subpart X), as applicable, (see docket section below), room M-1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Marguerite Thweatt, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5607.

Docket. Docket No. A-88-02, containing the supporting information for the original subpart N NESHAP and this action, Docket No. A-88-03, containing the supporting information for the original subpart O NESHAP, Docket No. A-88-11, containing the supporting information for the original subpart M NESHAP, and Docket No. A-92-43, containing the supporting information for the original subpart X NESHAP, are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M-1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5420.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the Clean Air Act (Act), as amended in 1990, requires States to develop programs for issuing operating permits to major stationary sources (including major sources of hazardous air pollutants listed in section 112 of the Act), sources covered by New Source Performance Standards (NSPS), sources covered by emission standards for hazardous air pollutants pursuant to section 112 of the Act, and affected sources under the acid rain program. Section 502(a) of the Act requires that major and nonmajor sources subject to 111 and 112 standards obtain operating permits. However, the Administrator may exempt certain categories of nonmajor sources from the requirement to obtain a permit “if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.* * *”

On July 21, 1992, EPA published in the Federal Register implementing regulations for the title V permit program (40 CFR Part 70). In § 70.3(b)(1), EPA opted to allow States to temporarily exempt nonmajor sources (except for affected sources and solid waste incineration units), including those which were subject to section 111 or 112 standards promulgated as of July 21, 1992, from the requirement to obtain a permit.

This temporary exemption was allowed for several reasons. Under part 70, permitting authorities will process applications and issue permits for tens of thousands of major sources during the early years of the program. The EPA considered it “unnecessarily burdensome” to also require permitting authorities to issue permits to a larger population of nonmajor sources within the same time frame. Such a requirement would stress the permitting system at its most vulnerable time, and hinder timely issuance of permits to both major and nonmajor emitters.

Additionally, the great majority of nonmajor sources are small businesses, and many are not currently subject to State air permit programs. Many small businesses will require greater assistance from the permitting authorities because of a relative lack of technical and legal expertise, resources, and experience in dealing with environmental regulation. If permitting authorities are overburdened from a backlog of permits to be processed, nonmajor sources will be unable to obtain technical and procedural assistance necessary to help them file timely and complete applications. This likely scenario constitutes an unnecessary burden on nonmajor sources, especially considering that by definition they emit less than major sources and that deferring permitting requirements does not defer a source’s obligation to comply with the applicable requirements of the Act. [The preamble to the final part 70 regulations (57 FR 32261) provides a more exhaustive discussion of EPA’s decision to allow States to temporarily exempt nonmajor sources from title V permitting.]

The part 70 regulations specify that this temporary exemption will expire at such time as EPA completes a rulemaking to determine how the part 70 program should be structured for nonmajor sources. In addition, the rulemaking will consider whether to grant permanent exemptions to any source categories for which there is a sufficient record to support such an exemption.

The part 70 regulations also address applicability for nonmajor sources subject to section 111 or 112 standards promulgated after July 21, 1992. Section 70.3(b)(2) specifies that for nonmajor sources that are subject to a standard or other requirement promulgated under either section 111 or 112 of the Act after July 21, 1992, the Administrator will determine whether to exempt any or all such sources from the requirement to obtain a part 70 permit at the time that the new standard is promulgated. Thus, decisions regarding permitting exemptions were to be made as each new standard covering nonmajor sources was published. With regard to section 112, EPA has published since July 21, 1992 (in 40 CFR Part 63) hazardous air pollutant standards that apply to nonmajor sources in the following five source categories: perchloroethylene dry cleaning facilities (September 22, 1993; 58 FR 49353), halogenated solvent cleaning (December 2, 1994; 59 FR 61801-amended June 5, 1995; 60 FR 29484), ethylene oxide commercial sterilization and fumigation operations (December 6, 1994; 59 FR 62585), hard and decorative chromium electroplating and chromium anodizing tanks (January 25, 1995; 60 FR 4948), and secondary lead smelters (May 31, 1995; 60 FR 32587). Of these five, only the standard for halogenated solvent cleaning contained a temporary permitting exemption. In this standard, States were given the option of permanently exempting small cold cleaners and temporarily exempting all other nonmajor solvent cleaners from title V permit requirements.

The remaining standards did not offer any exemptions from permitting, although the preamble to the dry cleaning standard did state an intention to allow States to defer permitting of nonmajor sources subject to that standard. Nonetheless, in the absence of specific language in that regulation granting States the option to exempt or temporarily exempt nonmajor sources from permit requirements, the General Provisions (subpart A) of part 63 apply, which by default extend the permitting requirement to nonmajor sources subject to post-July 21, 1992, MACT standards.

II. Proposed Changes to Subpart N, Subpart O, and Subpart M

A. State Option to Defer Nonmajor Sources

The final rules, that is subparts N, O, and M, required all affected nonmajor sources to obtain

a title V permit from the appropriate permitting authority. All affected nonmajor sources in the above source categories are required to apply for a title V permit within 12 months of the later of the following dates: the effective date of the respective MACT standard or the effective date of a title V program to which an affected source in the above source categories is subject. Major sources in the above source categories are required to apply for and obtain permits according to the transition plans outlined in the title V programs submitted by the State and local permitting authorities for EPA approval.

Several comments were received regarding the title V permit requirements for area sources in the Chromium Electroplating rule (subpart N) before promulgation. The commenters believed that the costs for nonmajor sources to obtain title V permits would be overly burdensome, and the emissions from such sources may be insignificant. However, in responding to these comments in the final rule, EPA believed that requiring area sources to obtain title V permits was important because of the toxicity of chromium compounds and the close proximity of many of these sources to residential areas. Following promulgation of these final rules, discussions were held with States and EPA Regions regarding their permitting strategies for nonmajor sources. As a result, EPA concluded that the Chromium Final Rule imposes an undue burden on the States in requiring the permitting of nonmajor Chromium sources without deferral. In particular, EPA found that permitting such sources during the early stages of the title V program would be particularly burdensome to permitting authorities. In addition to ensuring compliance with the requirements of the standard, permitting authorities would also need to contact and educate owners or operators of nonmajor sources regarding title V requirements. Following the submittal of applications, permitting authorities would then begin processing such applications in conjunction with major source applications. Given that the vast number of Chromium sources (about 5,000 nationwide) are nonmajor sources, requiring a permitting authority to permit nonmajor sources during the early years of implementing a title V program imposes an undue burden.

The EPA believes that the Final Rule as promulgated will also impose an undue hardship on a majority of owners or operators of nonmajor sources because this burden on permitting authorities translates into a burden on sources subject to the program. To require that owners or operators of nonmajor sources meet the requirement of filing a timely and complete application prior to or within the initial implementation period of the Chromium Electroplating MACT Standard would place an undue burden on these sources. As a result, the EPA has concluded that the burden associated with permitting outweighs the enhancement to the enforceability of this standard that would result from inclusion in a title V permit. Therefore, the Final Rule is being amended to allow States to defer for five (5) years all nonmajor Chromium sources from being subject to the requirements of a title V permit

program.

The 5-year deferral is determined with respect to the effective date of the first State or local program to defer nonmajor sources from title V permitting. Washington State and local programs within the State of Washington were the first programs approved by EPA which deferred nonmajor sources. Final action on these programs was published on November 9, 1994, and the programs became effective on December 9, 1994. As a result, the 5-year deferral ends on December 9, 1999, with Chromium sources becoming subject to title V on that date. Applications from nonmajor Chromium sources are to be filed within 12 months of becoming subject to title V (by December 9, 2000). This also applies to nonmajor sources in subparts O and M for similar reasons. The EPA emphasizes that this deferral applies to nonmajor sources.

The sole standard which will not offer temporary exemptions from part 70 permitting requirements is the secondary lead smelter standard (subpart X, promulgated on May 31, 1995 (60 FR 32587)). In contrast to the hundreds or thousands of sources in the four other source categories, there are a total of only 16 secondary lead smelters and only five of these are nonmajor sources. Additionally, the five nonmajor lead smelters are owned by relatively large companies. These companies should be better equipped to handle the part 70 permitting process than the small businesses characterizing the other source categories. For these reasons, EPA concludes that requiring the five sources to obtain part 70 permits without delay will not be impracticable or infeasible for the State or local permitting authorities involved and will not unnecessarily burden the five companies.

B. Proposed Permanent Exemption of Certain Decorative Chromium Electroplating and Chromium Anodizing Operations

Section 502(a) of the Act expressly gives the Administrator the discretion to exempt one or more nonmajor source categories (in whole or in part) from the requirement to obtain a permit "if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories." 42 U.S.C. Section 7661a (a). One factor that EPA considers as part of the unnecessarily burdensome criteria is the degree to which the standard is implementable outside of a title V permit, such that the title V permit will provide minimal additional benefit with regard to source-specific tailoring of the standard. To the extent such benefit is minimal, it supports the finding that the burden imposed is "unnecessary." This factor was analyzed when EPA evaluated decorative chrome plating (using hexavalent chromium baths) and chromium anodizing processes that use fume suppressant technology to reduce chromium emissions during operation. The fume suppressant technology

inhibits emissions at the source by reducing the surface tension of the plating solution. The standard requires that the surface tension be kept below 45 dynes per centimeter (dynes/cm) in order to comply. In addition, the surface tension must be measured at a certain specified time interval to ensure continuous compliance. This measure of compliance (45 dynes/cm) is directly stated in the standard and is directly enforceable. No judgment or negotiation is required in establishing a directly enforceable monitoring value during a performance test as is the case with the other chromium sources covered by the rule which use add-on controls. Also included in this permitting exemption are the decorative chrome plating operations using the trivalent chrome baths which incorporate the use of wetting agents which inhibit chromium emissions as a bath component. The standard does not have any additional requirements for these sources except for recordkeeping of chemicals bought.

Although sources using fume suppressant technology could be permitted through general permits, thereby reducing the administrative permitting burden for these sources, EPA believes this would add minimally to enforceability of the rule. This is because the reporting, recordkeeping, and annual compliance certification requirements of the rule already approximate those which would be imposed through title V, and which constitute a primary value added by a general title V permit.

Therefore, for the reasons stated above, the EPA is proposing to permanently exempt all hexavalent decorative plating and chromium anodizing operations that use fume suppressants as an emission reduction technology and all trivalent decorative plating operations incorporating wetting agents as a bath component from the requirement of obtaining a title V permit. This is based upon EPA's determination that it will be unnecessarily burdensome for these sources to obtain permits.

All the requirements listed in the final standards (subparts N, O, and M) will continue to be applicable per the schedule that is provided in the respective rules. For example, all sources still must comply with the compliance schedule within the rule, perform monitoring of the required parameters for ensuring compliance, and follow the reporting and recordkeeping requirements. The Administrator or a delegated State or local authority will enforce the requirements of the final rules through appropriate means, and will not be handicapped by the temporary or permanent exemptions from the title V permit requirements. The EPA believes that through the implementation of the final rules, the primary goal of significant reductions in chromium, ethylene oxide, and perchloroethylene emissions will be achieved.

III. Possible Additional Permanent Exemptions

Although this action proposes temporary exemptions for the subject source categories (except for proposed permanent exemptions for two subcategories within the chrome plating category), EPA will consider promulgating additional permanent exemptions for any of these source categories or subcategories within these source categories if warranted. The EPA specifically solicits comment on whether any of the source categories for which temporary exemptions are being proposed should be permanently exempted from title V requirements and the reasons for such permanent exemptions. Comments should address the Clean Air Act criteria for exempting categories from permitting requirements, which are that it would be “impracticable, infeasible, or unnecessarily burdensome on such source categories.” Any comments received and additional information obtained by EPA after this proposal will be considered in determining whether sufficient justification exists to promulgate permanent exemptions.

IV. Typographical Correction

A minor typographical error was discovered in section 63.344 of the subpart N. It is being amended here to correctly present our intention.

V. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding the proposed amendments in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed amendments should contact the EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section at the address given in the ADDRESSES section of this preamble and should refer to the applicable docket number.

A verbatim transcript of the hearing and written statements will be available for inspection and copying during normal business hours at the EPA's Air Docket Section in Washington, D.C. (see ADDRESSES section of the preamble).

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) were submitted to and approved by the Office of Management and Budget (OMB). Today's proposed changes to the NESHAP would not increase the information collection burden estimates made previously. In fact, they are expected to reduce the required paperwork by providing the opportunity for delays for some sources and exemptions for others from requirements to obtain a title V permit.

C. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a 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 the Executive Order, the OMB has notified the EPA that it does not consider this to be a "significant regulatory action" within the meaning of the Executive Order. Therefore, the EPA did not submit this action to the OMB for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." A regulatory flexibility analysis (RFA) is required if preliminary analysis indicates "a significant economic impact on a substantial number of small entities." As explained earlier in this notice, the proposed amendments would reduce the impacts on small businesses by allowing States to delay some

and exempt others from the requirement to obtain a title V permit.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (“unfunded Mandates Act”) (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

As explained earlier in this notice, the proposed amendments would reduce the cost to State, local, and tribal governments and the private sector by allowing States to delay some and exempt others from the requirement to obtain a title V permit. Therefore, EPA has not prepared a budgetary impact statement for the proposed amendments.

List of Subjects in 40 CFR Part 63

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

Dated: December 1, 1995.

Carol M. Browner, Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 63-[AMENDED]

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

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

Subpart N-[Amended]

2. Section 63.340 is amended by revising paragraph (e) to read as follows:

§ 63.340 Applicability and designation of sources. * * * * *

(e) (1) The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of the following types of operations that are not by themselves major sources and that are not located at major sources, as defined under 40 CFR 70.2, is permanently exempt from title V permitting requirements for that operation:

(i) Any decorative chromium electroplating operation or chromium anodizing operation that uses fume suppressants as an emission reduction technology; and

(ii) Any decorative chromium electroplating operation that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient.

(2) An owner or operator of any other affected source subject to the provisions of this subpart is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet the compliance schedule as stated in section 63.343.

3. Section 63.342 is amended by revising the first sentence of paragraph (c) (2) (i) (B) and introductory text of paragraph (f) (3) (i) to read as follows:

§ 63.342 Standards. * * * * *

(c) * * *

(2) * * *

(i) * * *

(B) By accepting a Federally-enforceable limit on the maximum cumulative potential rectifier capacity of a hard chromium electroplating facility and by maintaining monthly records in accordance with § 63.346(b) (12) to demonstrate that the limit has not been exceeded. * * *

* * * * *

(f) * * *

(3) * * *

(i) The owner or operator of an affected source subject to the work practices of paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit, if and when a title V permit is required. The plan shall include the following elements:

* * * *

§ 63.344 [Amended]

4. In § 63.344, paragraphs (e)(3)(v) and (e)(4)(iv) are amended by revising the word "less" to read "more."

5. Section 63.347 is amended by revising the introductory text in paragraph (e)(2) and paragraph (f)(1) to read as follows:

§ 63.347 Reporting requirements. * * * *

(e) * * *

(2) If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator a notification of compliance status, signed by the responsible official (as defined in § 63.2) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the appropriate authority. The notification shall list for each affected source: * * *

* *

(f) * * *

(1) If the State in which the source is located has not been delegated the authority to implement the rule, the owner or operator of an affected source shall report to the Administrator the results of any performance test conducted as required by § 63.7 or § 63.343(b). If the State has been delegated the authority, the owner or operator of an affected source should report performance test results to the appropriate authority. * * *

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6. Table 1 to subpart N of Part 63 is amended by revising the entry for “63.5(a)” to read as follows:

Table 1 to Subpart N of Part 63-General Provisions Applicability to Subpart N

General provisions reference	Applies to subpart N	Comment
63.5(a).....	Yes.....	Except replace the term “source” and “stationary source” in § 63.5(a) (1) and (2) of subpart A with “affected sources.”

Subpart O-[Amended]

7. Section 63.360 is amended by revising paragraph (f) to read as follows:

§ 63.360 Applicability. * * * * *

(f) The owner or operator of a source, subject to the provisions of the title 40, chapter I, part 63 subpart O, using 1 ton (see definition) is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this § 63.360. *

* * * *

Subpart M-[Amended]

8. Section 63.320 is amended by adding paragraph (k) to read as follows:

§ 63.320 Applicability. * * * * *

(k) The owner or operator of any source subject to the provisions of this subpart M is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet compliance schedule as stated in this § 63.320.

Subpart X-[Amended]

9. Section 63.541 is amended by adding paragraph (c) to read as follows:

§ 63.541 Applicability. * * * * *

(c) The owner or operator of any source subject to the provisions of the title 40, chapter I, part 63 subpart X is required to obtain a title V permit from the applicable permitting authority in which the affected source is located.

[FR Doc. 95-30260 Filed 12-12-95; 8:45 am] BILLING CODE 6560-50-P