

lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

**I. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets 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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

**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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 14, 1999. The List Rule was promulgated prior to the effective date of the Congressional Review Act. The RMP Rule which was promulgated in June 1996, was submitted 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 9**

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 2, 1999.

**Oscar Morales,**

*Director, Collection Strategies Division, Office of Information Collection.*

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

**PART 9—[AMENDED]**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. In § 9.1 the table is amended by revising the entry for "68.120(a), (e), and (g)" and adding new entries in numerical order under the indicated heading to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

\* \* \* \* \*

40 CFR citation	OMB control No.
* * * * *	
<b>Chemical Accident Prevention Provisions</b>	
68.12 .....	2050-0144
68.15 .....	2050-0144
68.39 .....	2050-0144
68.42 .....	2050-0144
68.48 .....	2050-0144
68.50 .....	2050-0144
68.52 .....	2050-0144
68.56 .....	2050-0144
68.58 .....	2050-0144
68.60 .....	2050-0144
68.65 .....	2050-0144
68.67 .....	2050-0144
68.69 .....	2050-0144
68.71 .....	2050-0144
68.73 .....	2050-0144
68.75 .....	2050-0144
68.79 .....	2050-0144
68.81 .....	2050-0144
68.83 .....	2050-0144
68.85 .....	2050-0144
68.95 .....	2050-0144
68.120(a), (e), and (g) .....	2050-0144
68.150 .....	2050-0144
68.155 .....	2050-0144
68.160 .....	2050-0144
68.165 .....	2050-0144
68.168 .....	2050-0144
68.170 .....	2050-0144
68.175 .....	2050-0144
68.180 .....	2050-0144
68.185 .....	2050-0144
68.190 .....	2050-0144
68.200 .....	2050-0144
68.215 .....	2050-0144
68.220 .....	2050-0144

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 [FR Doc. 99-32379 Filed 12-13-99; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[AD-FRL-6508-7]

RIN 2060-A158

**Title V Operating Permit Deferrals for Area Sources: National Emission Standards for Hazardous Air Pollutants (NESHA) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Ethylene Oxide Commercial Sterilization and Fumigation Operations; Perchloroethylene Dry Cleaning Facilities; Halogenated Solvent Cleaning Machines; and Secondary Lead Smelting**

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

**ACTION:** Final rule; amendments.

**SUMMARY:** This action continues to allow permitting authorities the discretion to defer Clean Air Act (Act) title V operating permit requirements until December 9, 2004, for area sources of air pollution that are subject to five NESHAPs. These amendments continue to relieve industrial sources, State, local, and tribal agencies, and the EPA Regional Offices of an undue regulatory burden during a time when available resources are needed to implement the title V permit program for major sources. Under these amendments, sources must continue to meet all applicable requirements, including all applicable emission control, monitoring, recordkeeping, and reporting requirements established by the respective NESHAP.

The title V operating permit deferral is an option at the permitting authority's discretion under EPA-approved State operating permit programs and not an automatic deferral that the source can invoke. Thus, State operating permit authorities are free to require area sources subject to the five NESHAPS to obtain title V permits. In areas where no State operating permit program is in effect, and the Federal operating permit program is administered by EPA, we will defer the requirement for title V permitting for these area sources until December 9, 2004.

**EFFECTIVE DATE:** December 14, 1999.

**ADDRESSES:** The following dockets, containing supporting information for the original rulemakings, are available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays: Docket No. A-88-11, subpart M NESHAP; Docket

No. A-88-02, subpart N NESHAP; Docket No. A-88-03, subpart O NESHAP; Docket No. A-92-39, subpart T NESHAP; Docket No. A-92-43, subpart X NESHAP. These dockets are available for public inspection at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460, telephone (202) 260-7548, Room M-1500, Waterside Mall (ground floor). We may charge a reasonable fee for copying.

**FOR FURTHER INFORMATION CONTACT:** For further information on today's action, contact Mr. Rick Colyer, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541-5262, fax number (919) 541-0942, or e-mail: colyer.rick@epa.gov. For further information regarding applicability of your source to today's action, contact your title V permitting authority.

**SUPPLEMENTARY INFORMATION:** *Judicial Review.* We proposed these amendments on August 18, 1999 (64 FR 45116). This action promulgating these amendments constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Act, judicial review of these final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 14, 2000. Under section 307(d)(7)(B) of the Act, only an objection to this rule 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 Act, the requirements established by today's

final action may not be challenged separately in any civil or criminal proceeding brought by us to enforce these requirements.

*Technology Transfer Network.* The Technology Transfer Network (TTN) is a network of our electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. You can access the TTN through the Internet at <http://www.epa.gov/ttn/>. If you need more information on the TTN, call the HELP line at (919) 541-5384.

The preamble outline follows.

- I. What types of facilities are potentially affected by these amendments?
- II Summary of the Proposed Rule and Description of the Final Rule
- III. What has changed since proposal?
- IV What comments did we receive on the proposed amendments?
- V. What are the administrative requirements for these amendments?
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - C. Executive Order 13132: Federalism
  - D. Congressional Review Act
  - E. Unfunded Mandates Reform Act
  - F. Regulatory Flexibility Act
  - G. Paperwork Reduction Act
  - H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  - I. National Technology Transfer and Advancement Act

**I. What types of facilities are potentially affected by these amendments?**

The regulated categories and entities potentially affected by this action include:

Category	North American Industry Classification System Codes	Examples of Potentially Regulated Entities.
Industry .....	331492 ..... 332, 333, 334, 335, 336, 447	Secondary lead smelters. Halogenated solvent cleaning machines at fabricated metal product manufacturing facilities, machinery manufacturing facilities, computer and electronic product manufacturing facilities, electrical equipment, appliance, and component manufacturing facilities, transportation equipment manufacturing facilities, and gasoline stations.
	332, 333, 334, 335, 336 .....	Chromium electroplating machines at fabricated metal product manufacturing facilities, machinery manufacturing facilities, computer and electronic product manufacturing facilities, electrical equipment, appliance, and component manufacturing facilities, and transportation equipment manufacturing facilities.
	8123 .....	Dry cleaning and laundry facilities.
	3391 .....	Ethylene oxide sterilizers at medical equipment and supplies manufacturing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers of the entities likely to be affected by this action. This table lists the types of entities that we are now aware could be affected by this action. Other types of entities not listed in this table could also be affected. To

determine whether your facility, company, business organization, etc., is affected by this action, you should carefully examine the applicability criteria in the following sections of title 40 of the Code of Federal Regulations (CFR):

- § 63.320, perchloroethylene dry cleaning.
- § 63.340, chromium electroplating.
- § 63.360, ethylene oxide sterilizers.
- § 63.460, halogenated solvent cleaners.
- § 63.541, secondary lead smelters.

If you have questions regarding the applicability of this action to a particular entity, consult your title V permitting authority.

## II. Summary of the Proposed Rule and Description of the Final Rule

The purpose of EPA's proposed amendments was to allow title V permitting authorities to extend the deadline for area sources subject to five NESHAPs for submitting title V permit applications. The source categories covered by the proposal were hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide commercial sterilization and fumigation operations, perchloroethylene dry cleaning facilities, secondary lead smelting facilities, and halogenated solvent cleaning machines at area sources. We have previously allowed permitting authorities to defer permit applications for these area sources in a series of rulemakings (60 FR 29484, June 5, 1995; 61 FR 27785, June 3, 1996; and 64 FR 37683, July 13, 1999). Those provisions expire on December 9, 1999. Since the conditions prompting the allowance for previous deferrals have not changed (see 64 FR 45116, August 18, 1999), we proposed to extend the deferral provisions for the five NESHAPs for another 5 years. We also proposed to revise the relevant regulations in order to improve their understandability, as directed by President Clinton's June 1, 1998, Executive Memorandum on Plain Language in Government Writing.

Our authority for establishing the deferrals is section 502(a) of the Act, which allows us to exempt non-major sources from the permitting requirement if we find that compliance with title V is impracticable, infeasible, or unnecessarily burdensome on the sources. Our General Provisions implementing section 112 of the Act provide that unless we explicitly exempt or defer area sources subject to a NESHAP from the title V permitting requirement, they are subject to permitting (40 CFR 63.1(c)(2)(iii)). As a result, under 40 CFR 70.3(b)(2), 71.3(b)(2) and 63.1(c)(2), we are to determine whether area sources will be required to obtain title V permits when we adopt the underlying NESHAP.

When we initially established the ability for permitting authorities to defer these area sources from title V, we stated that we would decide whether to adopt permanent exemptions by the time the deferrals expired, and that we would continue to evaluate the permitting authorities' implementation and enforcement of the NESHAP requirements for area sources not

covered by title V permits, the likely benefit of permitting such sources, and the costs and other burdens on such sources associated with obtaining title V permits. However, as we explained in the August 18, 1999, proposal, we do not yet have sufficient information to determine whether permanent exemptions are warranted for these area sources and are continuing to evaluate the other considerations. Thus, we are not prepared to make decisions that either permanently relieve these area sources from title V or that require them to become immediately subject to the permitting requirement.

Moreover, we noted that many permitting authorities are struggling to timely issue initial title V permits to major sources and other sources that have been subject to the permitting requirement since the beginning of the program, and that we are concerned about the impact of subjecting area sources to the permit application deadlines on permitting authorities. We stated that we believe the most reasonable approach is to extend the status quo for one more 5-year cycle of permitting while we obtain necessary information, rather than to decide by default by allowing the existing deferral to expire.

Today's final amendments adopt the amendments as proposed and extend the option of approved part 70 permitting authorities to defer the subject area sources from the part 70 permitting requirements. The deferral may extend until December 9, 2004. The deferral is not an automatic benefit provided to the sources. Rather, permitting authorities may exercise their discretion to either defer the area sources or to require them to apply for and obtain part 70 permits. Some permitting authorities may decide that area sources in the subject source categories warrant permitting based on local considerations or other factors, or they may have in place streamlined permitting mechanisms (such as the use of general permits or "permits by rule") that minimize the burden on both the permitting authority and the source.

For area sources that are not covered by an effective approved part 70 program and are subject to the EPA-administered part 71 permitting program, today's final rule amendments hereby announce that area sources subject to the five NESHAPs mentioned above are deferred from permitting under part 71 until December 9, 2004. For purposes of both part 70 and part 71, for the reasons discussed in the proposal (64 FR 45116, August 18, 1999) and as explained below, we conclude that requiring all area sources subject to

the NESHAPs that are being amended by today's rulemaking to obtain title V permits at this time would constitute an impracticable, infeasible and unnecessary burden on these area sources, and would be an additional burden on the permitting authorities that have not yet determined that they are prepared to begin permitting these sources.

## III. What Has Changed Since Proposal?

We received seven comment letters, most of which supported the proposed deferral extension. We have considered all comments received (summarized and responded to in the next section) and concluded that no changes from proposal are necessary.

## IV. What Comments Did We Receive on the Proposed Amendments?

The following paragraphs contain summaries of the comments we received on the proposal and our responses.

*Comment:* Most commenters supported the proposed deferral of title V permitting of area sources. Commenters provided numerous reasons for their support, including assertions that the subject area sources are already adequately controlled, and that there would be no additional environmental benefit of requiring them to get permits; that permitting would impose a significant unnecessary burden on regulatory agencies and/or sources; that the deferral will allow EPA additional time to determine whether permanent title V exemptions for area sources are appropriate; that additional time is necessary for permitting authorities to review and issue title V permits to sources currently required to obtain title V permits; and that current rules and permitting mechanisms already sufficiently address area sources under State and local programs.

*Response:* We appreciate the support for the proposed extension of the deferral. The EPA understands that these area sources are already required to comply with emissions standards regardless of whether they are required to obtain permits. However, there are some general advantages to permitting that should not be overlooked. Requiring sources to obtain title V permits helps assure that complex applicability determinations, *i.e.*, which requirements apply and how, are resolved prior to the issuance of a permit. In addition to providing clarity for a source, the resolution of a source's applicability issues facilitates both civil and criminal enforcement of the source's applicable requirements. In the process of applying for a title V permit, many sources have discovered that they

are out of compliance with various applicable requirements. The regulations at 40 CFR parts 70 and 71 require sources to self-certify compliance with applicable requirements initially and annually and provide additional assurance of ongoing emissions reductions. Permitting provides an opportunity for the public to comment on whether a source is complying with its applicable requirements. Permits also require prompt reporting of deviations from the permit. In short, one of the benefits of title V permitting is that it enhances the effectiveness of rules.

We are also aware that some States and local agencies subject these sources to non-title V permitting programs that may serve purposes similar to those of title V. At this point in the implementation of title V, we agree that there may be significant undue burden on permitting authorities not prepared for area source permitting and on area sources preparing title V permit applications. Some permitting authorities did not fully anticipate the amount of work necessary to implement the title V program, and clearly some of these question whether the additional work of permitting thousands of area sources provides a commensurate benefit. Moreover, many of these permitting authorities are currently struggling to issue permits to major sources and other covered sources, and are not yet prepared to add to this significant permitting responsibility.

While for some permitting authorities this problem could possibly be overcome by using more streamlined permitting approaches, e.g., general permits (see §§ 70.6(d) and 71.6(d)), we may use the deferral period to consider ways to reduce the permitting burden on area sources and to better accommodate the needs of area source permitting. We will also use the additional time to assess whether or not permanent exemptions are appropriate.

We agree that permitting authorities should be allowed to defer, if necessary, title V permitting for area sources, if additional time is necessary to issue permits to sources currently required to obtain title V permits. It is apparent that title V permitting is not at the stage originally envisioned when the part 70 rules were promulgated. At this point in time, EPA anticipated that most, if not all, part 70 permits would have been issued to sources subject to the program upon its effective date, and that permitting authorities would be in a better position to expand the program to other sources. However, many permitting authorities need additional time to issue permits to sources that are

currently subject to the program and, therefore, are not at an implementation stage that allows them to shift their attention to area sources.

*Comment:* One commenter claimed that the deferred area sources would be allowed to continue to emit chemicals unchecked into the air, exposing employees and the public to uncontrolled levels of the emitted chemicals during the deferral period. This commenter also felt that funding of expanding the title V permit program to cover area sources would be no problem because permit fees would make it unnecessary to draw upon limited existing resources. This commenter was also concerned that the permitting deferral would impede public access to environmental data. The commenter stressed the benefits of the permitting process, including those involving consistent reporting procedures, improved measurements of pollution, improved air quality data, and greater public participation.

*Response:* The permit program does not directly control emissions to the air, but as discussed above enhances compliance assurance with all applicable requirements including emissions limitations. The permit is essentially a comprehensive document reflecting the regulatory requirements that the source must already meet. The existing regulatory requirements that impose emission standards, including these five Maximum Achievable Control Technology (MACT) rules, irrespective of the title V permit, provide the air emission reduction requirements, and most of the monitoring, recordkeeping, and reporting requirements under the Act that are needed to determine and enforce compliance. All of these rules are still in effect, and sources must comply with them. Therefore, the absence of a title V permit for an area source subject to a NESHAP will not allow it to emit pollutants "unchecked" into the air.

While EPA agrees that title V permit fees should be set at levels high enough to allow the permitting authority to hire and retain qualified permit writers, we are not convinced that the ability to charge area sources fees alone would enable permitting authorities to immediately expand their title V programs to cover area sources. This is because permitting authorities have also faced significant problems in timely issuance of permits to major sources, which are also covered by fees. Since area sources are far more numerous than major sources, we expect that forcing an expansion at this point could raise problems apart from adequate funding. Many permitting authorities at the

beginning of the title V permit program did not fully anticipate what was involved in implementing the title V program, have still not caught up on their backlog of major source permit applications, and may not, merely through imposing fees, feel prepared to expand title V permitting to area sources.

Finally, while the presence of a title V permit does enhance public access to information and facilitates citizen participation in enforcement, the permit deferral should not deny public access to environmental information. All non-confidential emissions information that underlying applicable requirements direct sources to send to implementing agencies is publically available under the applicable rule requirements, regardless of the source's permit status (see 40 CFR 63.15).

*Comment:* One State permitting authority commenter believes that area source permitting can occur without creating an undue burden by issuing title V general permits, or "permits by rule," to area sources. This commenter further recommended establishing a strong compliance assistance program to enhance the permitting program. In addition, the commenter supported a strong inspection program and good recordkeeping requirements. However, the commenter felt that reporting requirements were an ineffective burden for most area sources. Finally, the commenter recommended that should EPA decide to continue the deferral as proposed, it should use the deferral period to review and revise the title V program to make it more appropriate for area sources.

*Response:* The commenter is correct in pointing out that general permits issued under 40 CFR parts 70 and 71 can be used and can be an effective way to issue permits to area sources without creating an undue burden for the source categories being covered by the general permits. The commenter provides a good example of the discretionary nature of the deferral. The deferral being promulgated in today's rulemaking does not automatically apply to every non-Federal title V permitting authority. Rather, this rulemaking allows non-Federal permitting authorities to choose whether deferral from title V permitting for area sources subject to one or more of these five MACT standards is appropriate for the area sources in question. In this case, the commenter has been able to structure his permitting program so that the permitting authority can issue permits to area sources easily and with little additional burden to the sources themselves. The commenter has also implemented a strong compliance

assistance program, coupled with a strong inspection program and good recordkeeping requirements to complement the general permits being issued. The EPA applauds the commenter's ability to overcome potential difficulties in permitting thousands of area sources.

However, there are many permitting authorities that continue to experience difficulties in issuing title V permits, even to major sources. This, in turn, would put a burden on the area sources that would have to get permits if the deferral were to expire because the permitting authority may not be able to provide much assistance to area sources in preparing their permit applications. Many permitting authorities may not be able to simply emulate the permitting approach taken by the commenter because of legislative or other constraints. This is evidenced by the other permitting authorities that commented in support of the deferral.

The EPA will take under advisement the commenter's suggestions that we review and revise, if necessary, the area source component of the title V permit program during the deferral period. The EPA is not at this point prepared to commit to such a revision or even agree that one is appropriate, but would welcome further comments on this issue.

*Comment:* Several commenters further recommended a permanent exemption from title V permitting for area sources subject to these five MACT standards.

*Response:* For essentially the same reasons that we are not prepared to immediately require permits for area sources, we are not promulgating a permanent exemption for these area sources at this time. That is, EPA is not in a position to conclude whether these sources should or should not be required to obtain permits. Several permitting authorities are currently able to accommodate area source permitting. The EPA will weigh the burden of title V permitting of area sources with the advantages of title V permitting in making future decisions regarding permanent exemptions. The EPA will use this deferral period to determine if title V permitting is necessary for certain or all area sources subject to these five MACT standards and deferred as of this rulemaking from title V permitting until December 9, 2004. As stated in the first deferral rulemaking for these five MACT source categories, we will also continue to evaluate State and local agencies' implementation and enforcement of these five MACT standards for area sources not covered by title V permits, the likely benefit of

permitting such sources, and the costs and other burdens on such sources associated with obtaining a title V permit (see 61 FR 27785 (June 3, 1996)).

#### **V. What Are the Administrative Requirements for These Amendments?**

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management (OMB) review and the requirements of the Executive Order. The Executive 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.

It has been determined that these amendments do not qualify as a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, are not subject to review by OMB.

##### *B. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

These amendments do not alter the control standards imposed by 40 CFR part 63, subparts M, N, O, T, or X for any source, including any that may affect communities of the Indian tribal governments. Under the amendments, sources must continue to meet all applicable requirements, including all applicable emission control, monitoring, recordkeeping, and reporting requirements established by the respective NESHAP. Hence, today's action does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these amendments.

##### *C. 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." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide OMB in a separately identified section of the preamble to the rule, a

federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

These final amendments 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. These amendments impose no requirements on the States, and simply allow the States the option to exercise their discretion to defer certain area sources from title V permitting. These amendments neither preempt States from requiring these sources to obtain permits, nor impose any burden on States seeking to do so. Rather, the intent of these amendments is to continue to allow States and their area sources to avoid burdens that would befall them if EPA were to allow the current regulatory provisions to expire. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *D. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *E. 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 to State, local, and tribal governments, in the aggregate, or to 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 these 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 the private sector in any 1 year nor do they significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

#### *F. Regulatory Flexibility Act*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with

these final amendments. The EPA has also determined that these amendments will not have a significant economic impact on a substantial number of small entities, because they impose no additional regulatory requirements on owners or operators of affected sources and allow State and federal permitting authorities to continue to relieve owners or operators of such sources of regulatory requirements that may otherwise apply if this action is not taken.

#### *G. Paperwork Reduction Act*

These amendments do not require the collection of any information. Therefore, the requirements of the Paperwork Reduction Act do not apply.

#### *H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

Executive Order 13045: "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 and environmental health or safety risk that the 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.

The EPA interprets 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. These amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are

developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

These amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*List of Subjects in 40 CFR Part 63*

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

Dated December 8, 1999.

**Carol M. Browner,**  
*Administrator.*

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

**PART 63—[AMENDED]**

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

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

**Subpart M—[Amended]**

2. Section 63.320 is amended by revising paragraph (k) to read as follows:

**§ 63.320 Applicability.**

\* \* \* \* \*

(k) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

**Subpart N—[Amended]**

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

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

\* \* \* \* \*

(e) \* \* \*

(2) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

**Subpart O—[Amended]**

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

**§ 63.360 Applicability.**

\* \* \* \* \*

(f) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

\* \* \* \* \*

**Subpart T—[Amended]**

5. Section 63.468 is amended by revising paragraph (j) to read as follows:

**§ 63.468 Reporting requirements.**

\* \* \* \* \*

(j) The Administrator has determined, pursuant to section 502(a) of the Act, that if you are an owner or operator of any batch cold solvent cleaning

machine that is not a major source and is not located at a major source, as defined under 40 CFR 63.2, 70.2, or 71.2, you are exempt from title V permitting requirements under 40 CFR parts 70 or 71, as applicable, for that source, provided you are not otherwise required to obtain a title V permit. If you own or operate any other solvent cleaning machine subject to the provisions of this subpart, you are also subject to title V permitting requirements. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

\* \* \* \* \*

**Subpart X—[Amended]**

6. Section 63.541 is amended by revising paragraph (c) to read as follows:

**§ 63.541 Applicability.**

\* \* \* \* \*

(c) If you are the owner or operator of a source subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable. Your title V permitting authority may defer your source from these permitting requirements until December 9, 2004, if your source is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If you receive a deferral under this section, you must submit a title V permit application by December 9, 2005. You must continue to comply with the provisions of this subpart applicable to area sources, even if you receive a deferral from title V permitting requirements.

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