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Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants From
Phosphoric Acid Manufacturing Plants
and Phosphate Fertilizers Production
Plants; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7229-5]

RIN 2060-AE44

National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA is taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for phosphoric acid manufacturing plants and the NESHAP for phosphate fertilizers production plants which were promulgated on June 10, 1999 under authority of section 112 of the Clean Air Act (CAA). The NESHAP apply to owners and operators of phosphoric acid and phosphate fertilizers production facilities that are major sources of hazardous air pollutants (HAP). The EPA is amending specific provisions in the NESHAP to resolve issues and questions raised after promulgation of the final rules. The amendments do not significantly change EPA's original projections for the

environmental benefits, compliance costs, and burden on industry, and do not affect the number of affected facilities.

EFFECTIVE DATE: June 13, 2002.

ADDRESSES: Docket No. A-94-02, containing information relevant to the final rule amendments, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: Air and Radiation Docket and Information Center (6102), U.S. EPA, 401 M Street, SW., Room 1500, Washington, DC 20460 or by phoning the Air Docket Office at (202) 260-7548. Refer to Docket No. A-94-02. The Docket Office may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC-C504-05), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541-5605, facsimile number (919) 541-5600, electronic mail (e-mail) address: barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of the final rulemaking. The docket is a

dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for the rulemaking is A-94-02.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. Today's action applies to process components at new and existing phosphoric acid manufacturing plants and phosphate fertilizers production plants. Regulated categories and entities include:

Source category	SIC	NAICS	Examples of regulated entities
Industrial	2874	325314	Phosphoric acid manufacturing facilities (wet process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, phosphate rock calciner, purified phosphoric acid process line).
Industrial	2874	325314	Phosphate fertilizers production (diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, granular triple superphosphate storage building).

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 is regulated by this action, you should examine the applicability criteria of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTION**.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 12, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure 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 rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

- I. Background
- II. Amendments Specific to Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
- III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
- IV. Administrative Requirements

- A. Executive Order 12866, Regulatory Planning and Review
- B. Executive Order 13132, Federalism
- C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
- E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
- F. Unfunded Mandates Reform Act of 1995
- G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
- H. Paperwork Reduction Act
- I. National Technology Transfer and Advancement Act of 1995
- J. Congressional Review Act

I. Background

The EPA promulgated NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants on June 10, 1999 (64 FR 31358). The NESHAP established standards to control HAP emissions from facilities producing phosphoric acid and phosphate fertilizers.

On August 4, 1999, The Fertilizer Institute (TFI) filed a petition for judicial review of the NESHAP, as provided for in CAA section 307(b), with respect to certain provisions regarding emissions standards for phosphate rock calciners, monitoring requirements in general, and applicability of the general provisions. On November 3, 1999, TFI filed an administrative petition for reconsideration raising these and other issues, and subsequently submitted supplementary materials in support of its petition.

On December 17, 2001 (66 FR 65072), we published a direct final rule with a parallel proposal that amended several sections of the final rule including the particulate matter (PM) emissions standards for existing phosphate rock calciners (regulating PM as a surrogate for HAP metals). We received an adverse comment on the revised PM emissions standards for existing sources and subsequently withdrew the direct final rule. In the final rule amendments, we are responding to the adverse comment and finalizing the phosphate rock calciner PM emissions standards proposed on December 17, 2001 (66 FR 65079). In addition, we are correcting two errors found in the operating requirements in §§ 63.604 and 63.624 of the final rule.

II. Amendments Specific to Subpart AA—National Emissions Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

The EPA is amending 40 CFR part 63, subpart AA, to revise the emissions limit for existing phosphate rock calciners. The EPA promulgated standards for phosphate rock calciners based on performance of the floor technology which was identical wet scrubbing technology installed on six identical calciners at one facility, plus data from a calciner with wet scrubbers at a second facility. The promulgated standard under 40 CFR 63.602 for existing calciners of 0.1380 grams per dry standard cubic meter (g/dscm) (0.060 grains per dry standard cubic foot (gr/dscf)) was based on emissions data for the floor technology which was available to EPA at that time.

Subsequent to receiving TFI's petition for reconsideration, we determined that the phosphate rock calciner at the second facility had been shutdown. Also, additional emissions and operating data from compliance tests of the six wet scrubbers installed at the same facility were submitted to EPA. Those data covered an 11-year period from 1991 to 2001.

The results of those data ranged from 0.060 to 0.22 g/dscm (0.026 to 0.097 gr/dscf). However, the petitioner indicated that the oldest 2 years of data would not be indicative of current operation. If those 2 years are excluded, the range of the data is 0.06 to 0.182 g/dscm (0.026 to 0.079 gr/dscf).

The comment we received on the proposed rule stated that EPA should not use information from all six calciners in revising the emission limit for existing sources. The commenter stated that all wet scrubbers are not identical and listed several operating parameters including pressure drop, liquid flow rate, and mist eliminator design. They stated that, therefore, the inability of one of the six calciners to meet the existing standard does not affect the ability of other better designed scrubbers to meet the standard. The commenter also mentioned that differences in the manufacturing process can affect the amount of particulate entering the control device. Finally, they stated that EPA has disregarded the finding of *Cement Kiln Recycling Coalition V. EPA*, 255 F.3d 855 (D.C. Cir. 2001) that "floors reflect what the best performers actually achieve".

We believe that the final rule amendments are consistent with the holding of *Cement Kiln Recycling Coalition*. In that case, the court considered a challenge to the Agency's practice of looking at sources outside the group of best performing sources to determine the variability of the best performers. The court held that, where factors other than the control technology affected the emissions level, such practice was not consistent with CAA section 112(d) because it failed to reflect a reasonable estimate of the emissions level of the best performing sources (255 F.3d at 866). The court noted that the Agency's practice may, however, comply with the statute where the record demonstrates "that MACT technology significantly controls emissions, or that factors other than the control technology have a negligible effect." (*Id.*)

That is the case here. The record demonstrates that the wet scrubbing MACT technology selected for phosphate calciners significantly

controls emissions and that factors other than control technology have a negligible effect. The MACT floor for categories with less than 30 sources is the average of the top performing five. However, we could find no basis to distinguish any reason that those six sources, which are located at the same facility, are not identical, with the only difference in emissions being due to normal process variation that is beyond the control of the facility.

All six calciners were designed to be identical. The phosphate rock inputs come from a common source. All six use the same fuel and have identical fuel systems. One operator runs four calciners, and one runs the other two. All operators receive the same training. The scrubbers have the same venturi pressure drop, liquid flow rates, and gas/liquid separation sections. Because factors other than the MACT technology do not affect emissions levels, consideration of data from all six sources to determine the variability experienced by the best performers is consistent with *Cement Kiln Recycling Association* and the requirements of section 112(d).¹

As discussed above, the data from the six facilities covered a range of 0.060 to 0.181 g/dscm (0.026 to 0.079 gr/dscf), which exceeds the promulgated standards.² Therefore, we are changing the emission standard under 40 CFR 63.602 for existing calciners to 0.184 g/dscm (0.080 gr/dscf).

III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

The EPA is amending the sections on operating requirements in 40 CFR part 63, subparts AA and BB.

In the final rule published on June 10, 1999 (64 FR 31358), we made a number of changes to the monitoring requirements in §§ 63.604 and 63.624 of the proposed rule. We created new §§ 63.604 and 63.624 titled operating requirements and moved the monitoring requirements to §§ 63.605 and 63.625. In the final versions of §§ 63.604 and 63.624, we stated that the owner/

¹ It should also be noted that the decision to exclude the data from the calciner that was recently shut down would not change the outcome of the floor determination.

² The commenter also stated that if EPA accepts data after the close of the public comment period, it must consider newer data from other plants. As noted above, EPA has all of the available data for the existing phosphate calciners.

operator must maintain the 3-hour averages of the pressure drop across each wet scrubber and the liquid flow rate to each scrubber within the allowable ranges established during the performance test.

However, in the final version of §§ 63.605 and 63.625 (monitoring requirements), we consistently refer to daily averages, not 3-hour averages. The discussion in the preamble of the final rule stated that our intent was that any exceedance of the operating range averages over 24 hours is a violation of the operating requirement. Based on that, our intent was to require that facilities maintain the averages of the pressure drop across each wet scrubber and the liquid flow rate to each scrubber within the allowable ranges established during the performance test on a daily average basis, not a 3-hour basis. Therefore, the reference to 3-hour averages in §§ 63.604 and 63.624 of the final rule was an error. In the final rule amendments, we are correcting §§ 63.604 and 63.624 to reflect our original intent by changing “3-hour average” to “daily average.”

IV. Administrative Requirements

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 “significant regulatory action” as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that the amendments do not constitute a “significant regulatory action” because they do not meet any of the above criteria. Consequently, the final rule

amendments were not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

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

The final rule amendments do not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule amendments will not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs to control emissions. Thus, Executive Order 13132 does not apply to the final rule amendments.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The final rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments are known to own or operate phosphoric acid manufacturing facilities or phosphate fertilizers production facilities. Thus, Executive Order 13175 does not apply to the final rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks 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 EPA.

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. The final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule amendments have been determined not to be “economically significant” as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

The final rule amendments are not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-

costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's amendments do not add new requirements or costs, the EPA has determined that the final rule 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. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule amendments are not subject to the requirements of section 203 of the UMRA.

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

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

For purposes of assessing the impacts of the final rule amendments on small entities, the EPA found that 2 of the 21 firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements

of the standards. Information available to EPA shows, however, that the second source is able to achieve the control levels associated with the promulgated rules using existing equipment. The second source would not be significantly impacted by the final rule amendments because it clarifies and makes corrections to the promulgated rules but imposes no additional regulatory requirements.

Because today's final rule amendments impose no additional regulatory requirements on owners or operators of phosphoric acid manufacturing plants or phosphate fertilizers production plants, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the phosphoric acid manufacturing and phosphate fertilizers production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB Control No. 2060-0361. An Information Collection Request (ICR) document has been prepared by EPA, and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672.

The amendments contained in this final rule will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

I. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104-113 (March 7, 1996), 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 procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

The final rule amendments do not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to the final rule amendments.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. Today's action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 5, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended to read 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 AA—[Amended]

2. Section 63.602 is amended by revising paragraph (d) to read as follows:

§ 63.602 Standards for existing sources.

* * * * *

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1810 gram per dry standard cubic

meter (g/dscm) (0.080 grains per dry standard cubic foot (gr/dscf)).

* * * * *

3. Section 63.604 is revised to read as follows:

§ 63.604 Operating requirements.

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, the owner/operator using a wet scrubbing emission control system must maintain daily averages of the pressure drop across

each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.605(d)(1) or (2).

Subpart BB—[Amended]

4. Section 63.624 is revised to read as follows:

§ 63.624 Operating requirements.

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is

required to be completed, the owner/operator using a wet scrubbing emission control system must maintain daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.625(f)(1) or (2).

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