

## FACT SHEET

### DIRECT FINAL AMENDMENTS TO AIR TOXICS STANDARDS FOR IRON AND STEEL FOUNDRIES

#### ACTION

- On May 6, 2005, the Environmental Protection Agency (EPA) issued direct final amendments to the national emission standards that reduce toxic air pollutants from iron and steel foundries. Toxic air pollutants, or air toxics, are known or suspected to cause cancer and other health problems. Foundries manufacture castings by pouring molten iron or steel melted in a furnace into a mold of a desired shape.
- EPA's direct final amendments clarify the existing work practice standards for scrap certification and scrap inspection/selection plans. Clarification of the standards will reduce compliance uncertainties and improve understanding of the rule requirements. EPA is issuing these amendments to resolve certain issues raised by industry trade associations after promulgation of the rule in 2004.
- The direct final amendments address issues concerning multiple scrap acquisition plans; restrictions on metal ingots, oil filters, and organic liquids; use of materials that have been cleaned or processed by the scrap supplier prior to shipment; and the ability to perform inspections at the scrap supplier's facility.
- EPA is publishing the amendments as a direct final rule because the changes are considered noncontroversial, and adverse comments are not expected.
- EPA will accept comment on a parallel proposal of the amendments for 30 days after publication in the *Federal Register* (45 days if a public hearing is requested). If no significant, adverse comments are filed, the direct final amendments will become effective 90 days after publication in the *Federal Register*.

#### HEALTH AND ENVIRONMENTAL BENEFITS AND COSTS

- The air toxics emitted from foundries contain metals such as lead and manganese and numerous organic compounds, including benzene, dioxin, and formaldehyde. These air toxic emissions are associated with a variety of adverse health effects including cancer and disorders of the respiratory, reproductive, and central nervous systems.
- The direct final amendments do not change the stringency of the existing standards or materially change the rule requirements. No health, environmental, energy, or cost impacts will occur as a result of the direct final amendments.

## **BACKGROUND**

- In the 1990 Clean Air Act Amendments, Congress directed EPA to use a “technology-based” approach to reduce emissions of air toxics from major sources of air pollution. Under this approach, all major sources must meet air toxic emission standards reflecting application of the maximum achievable control technology.
- The existing standards, issued in April 2004, establish emission limits for different types of process equipment in addition to work practice requirements which minimize the amount of contaminants contained in charge materials. When implemented in early 2005, the standards are expected to reduce air toxic emissions from foundry operations by more than 800 tons per year.

## **FOR MORE INFORMATION**

- To download a copy the direct final amendments and parallel proposal, go to EPA's World Wide Web site at <http://www.epa.gov/ttn/oarpg> under newly proposed or issued rules.
- For further information about the amendments, contact Mr. Kevin Cavender of EPA's Office of Air Quality Planning and Standards at (919) 541-2364 or [cavender.kevin@epa.gov](mailto:cavender.kevin@epa.gov).
- Send any comments on the amendments (in duplicate if possible) to: NESHAP for Iron and Steel Foundries Docket, EPA Docket Center (Air Docket), U.S. EPA West (6102T), Room B-108, 1200 Pennsylvania Avenue, NW, Washington DC 20460, Attention Docket No. OAR-2002-0034. You may also submit comments and data through the Federal eRulemaking Portal at <http://www.regulations.gov>, the Agency website at <http://www.epa.gov/edocket>, or electronic mail (e-mail) at [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attention Docket No. OAR-2002-0034. Submit electronic comments in WordPerfect<sup>(R)</sup> file format. Electronic comments and data must note the docket number (Docket No. OAR-2002-0034). You may file electronic comments online at many Federal Depository Libraries. Do not submit confidential business information (CBI) by e-mail. See the *Federal Register* notice for more information on how to handle the submittal of CBI.

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[OAR-2002-0034; FRL-            ]**

**RIN 2060-AM85**

**National Emission Standards for Hazardous Air Pollutants  
for Iron and Steel Foundries**

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** On April 22, 2004, the EPA issued national emission standards to control hazardous air pollutants emitted from iron and steel foundries. This action amends the work practice requirements for materials certification and scrap selection/inspection programs. The direct final amendments add clarification and flexibility but do not materially change the requirements of the rule.

**DATES:** The direct final rule amendments will be effective on [INSERT DATE 90 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE AMENDMENTS IN THE FEDERAL REGISTER] without further notice, unless we receive adverse comments by [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE AMENDMENTS IN THE FEDERAL REGISTER], or by [INSERT DATE 45 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE AMENDMENTS IN THE FEDERAL REGISTER] if a public hearing is

requested. If such comments are received, we will publish a timely withdrawal in the Federal Register indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of the direct final amendments for which we do not receive adverse comment will become effective on [INSERT DATE 90 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE AMENDMENTS IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the direct final rule amendments is approved by the Director of the Federal Register as of [INSERT DATE OF PUBLICATION OF THE DIRECT FINAL RULE AMENDMENTS IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2002-0034, by one of the following methods:

- Federal eRulemaking Portal:  
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://www.epa.gov/edocket>.  
EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID OAR-2002-0034, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA, 1301 Constitution Avenue, NW, Room B102, Washington, DC. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR-2002-0034. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know

your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air

and Radiation Docket, Docket ID No. OAR-2002-0034, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cavender, Emissions, Monitoring and Analysis Division (C339-02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541-2364, fax number (919) 541-1903, e-mail address: [cavender.kevin@epa.gov](mailto:cavender.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry .....	331511 ...	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512 ...	Steel investment foundries.
	331513 ...	Steel foundries (except investment).
Federal government .....		Not affected.
State/local/tribal government .....		Not affected.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in §§63.7681 and 63.7682 of the national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section. Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final rule amendments will be available on the WWW through the Technology Transfer Network (TTN). Following the

Administrator's signature, a copy of the direct final rule amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by [INSERT DATE 60 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE AMENDMENTS IN THE FEDERAL REGISTER ]. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Comments. We are issuing the amendments as a direct final rule without prior proposal because we view the amendments

as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this Federal Register, we are publishing a separate document that will serve as the proposal for the amendments contained in the direct final rule in the event that adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the Federal Register informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

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

- I. Background
- II. Summary of the Direct Final Rule Amendments
- III. Summary of Environmental, Energy, and Economic Impacts
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

### **I. Background**

On April 22, 2004 (69 FR 21906), we issued the NESHAP for iron and steel foundries (40 CFR part 63, subpart EEEEE). The NESHAP establish emissions limits and work practice standards for hazardous air pollutants (HAP) from foundry operations. The NESHAP implement section 112(d) of the CAA by requiring all iron and steel foundries that are major sources of HAP to meet standards reflecting the application of the maximum achievable control technology (MACT).

After publication of the NESHAP, the American Foundry Society, the Alliance of Automobile Manufacturers, and the Steel Founders' Society of America filed petitions for reconsideration of the final rule. One of the petitions requested clarification of certain aspects of the scrap certification and scrap selection/inspection work practice standards in 40 CFR 63.7700 concerning:

- use of multiple scrap acquisition options;
- requirements for "certified" metal ingots, oil filters, and organic liquids; and

- classification of "cleaned" scrap materials.

We agree with the petitioner(s) that certain changes are needed to clarify these aspects of the work practice standards. The changes to the NESHAP in today's direct final rule amendments are expected to resolve issues associated with the work practice standards which require implementing guidance or minor changes in regulatory language.

Because the work practice standards will become effective on April 22, 2005 (1 year after promulgation), the clarifications contained in the direct final rule amendments are time-critical. Today's direct final rule amendments will reduce compliance uncertainties and improve understanding of the rule requirements.

## **II. Summary of Direct Final Rule Amendments**

The work practice standards in 40 CFR 63.7700(a) require the owner or operator to comply with the scrap certification requirements in 40 CFR 63.7700(b) or the scrap selection/inspection requirements in 40 CFR 63.7700(c). According to one petitioner, the requirements in 40 CFR 63.7700(a) may be interpreted to require a foundry to either comply with the certification requirements in 40 CFR 63.7700(b) for the entire foundry's scrap material and melt

only those materials that are "certified," or to comply with scrap selection/inspection requirements in 40 CFR 63.7700(c) for all scrap materials--even if a significant portion of the scrap material used by the foundry meets the requirements in 40 CFR 63.7700(b).

The requirements in 40 CFR 63.7700(a) were never intended to prevent a foundry from having segregated scrap storage areas, piles or bins, with the scrap material in some of these areas being subject to scrap certification requirements in 40 CFR 63.7700(b) and scrap material in other areas subject to scrap selection/inspection requirements in 40 CFR 63.7700(c). For example, we did not intend to require inspections of pig iron or other "certifiable" scrap simply because a foundry also recycled internal oily turnings. Consequently, we have revised the language in 40 CFR 63.7700(a) to clarify that the scrap requirements apply to each type of scrap material received or each scrap storage area, pile, or bin as long as the scrap material subject to certification requirements in 40 CFR 63.7700(b) remains segregated from scrap material subject to selection/inspection plans in 40 CFR 63.7700(c).

We have also clarified the requirement in 40 CFR 63.7700(b) that the foundry operate by a written

certification that it purchases and uses only "certified" metal ingots, pig iron, slitter, or other materials that do not use post-consumer automotive body scrap, post-consumer engine blocks, oil filters, oily turnings, lead components, mercury switches, plastics, or organic liquids. The petitioner specifically asked EPA to identify who must certify the metal ingots, to clarify the "no organic liquids" restriction, and to modify the regulatory language to clarify that the prohibited material include only "used" oil filters.

We agree with the petitioner's concerns and have clarified the regulatory text of 40 CFR 63.7700(b). It is not our intent to require a separate certification for metal ingots. Accordingly, we have deleted the word "certified" from 40 CFR 63.7700(b). We have clarified the restriction on oil filters by adding the term "post-consumer" to signify that used filters are the materials of concern. We have clarified the "no organic liquids" requirement by using the term "free organic liquids." The direct final rule amendments define "free organic liquids" as any material that fails the "Paint Filter Liquids Test" by EPA Method 9095A (incorporated by reference—see 40 CFR 63.14). If any portion of the material passes through and drips from the

filter within the 5-minute test period, the material contains free liquids. EPA Method 9095A is available in EPA publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (Revision 1, December 1996).

The petitioner also stated that the regulatory language in 40 CFR 63.7700(b) does not allow for the recycling and use of materials if they have been processed to remove contaminants of concern. In support, the petitioner explained that some suppliers dismantle or crush and then wash post-consumer engine blocks prior to shipment as scrap material. Similarly, some scrap suppliers process oily turnings or used oil filters to make them environmentally acceptable for melting. In response to the petitioner's concerns, we have added a provision to 40 CFR 63.7700(b) to allow for the use of "cleaned" scrap material. The new provision states that any post-consumer engine blocks, post-consumer oil filters, or oil turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in the certification.

The work practice standards in 40 CFR 63.7700(c)(1)

require the owner or operator to operate according to a materials acquisition program to limit the organic contaminants in the scrap. The requirements for material to be charged to a scrap preheater, electric arc furnace, or electric induction furnace are more stringent than those required for scrap material that is to be charged to a cupola furnace. During conversations with the petitioners, concerns were raised that the requirements in 40 CFR 63.7700(c)(1) may be interpreted to require a foundry to exclusively comply with either the requirements in 40 CFR 63.7700(c)(1)(i) or (ii) for the entire foundry's scrap material--even if the foundry operates both a cupola and one of the other furnace types. This was not our intent. As such, we have added the words "as applicable" to 40 CFR 63.7700(c)(1) to clarify that a foundry may process scrap that meets 40 CFR 63.7700(c)(1)(i) and scrap that meets 40 CFR 63.7700(c)(1)(ii) in the appropriate furnaces.

During discussions with the petitioners regarding clarification of the work practice requirements, questions were raised regarding the ability to perform inspections at the scrap supplier's facility. In many cases, foundry representatives visit the supplier's facility to personally select and inspect scrap materials. To clarify our intent

that the NESHAP allow inspections to take place at the supplier's facility, we have expanded 40 CFR 63.7700(c)(3) to specifically address this situation. The direct final rule amendments state that the visual inspections may be performed at the scrap supplier's facility. However, the inspection procedures in the foundry's scrap inspection/selection plan must include an explanation of how the periodic inspections ensure that not less than 10 percent of scrap purchased from each supplier is subject to inspection. This provision is needed to maintain consistency with the inspection requirements for scrap received at the facility gate.

### **III. Summary of Environmental, Energy, and Economic Impacts**

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

### **IV. Statutory and Executive Order Reviews**

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject

to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the

information collection requirements contained in the existing rule (40 CFR part 63, subpart EEEEE) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0543, EPA ICR number 2096.02. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of today's direct final rule amendments on small entities, small entity is defined as: (1) a small business having 500 or fewer employees, as defined by the Small Business Administration for NAICS codes 331511, 331512 and 331513; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

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

We conclude that there will be a positive impact on small entities because the direct final rule amendments clarify the rule requirements to reduce compliance uncertainties. The changes do not impose new costs or requirements. We have, therefore, concluded that today's direct final rule amendments will relieve regulatory burden for all small entities.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory

actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The

plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999)

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

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

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the

development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

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

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

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501

of the Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because the NESHAP (and the direct final rule amendments) are based on technology performance and not on health or safety risks.

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

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

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104-113; 15 U.S.C 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available

and applicable voluntary consensus standards.

The direct final rule amendments involve technical standards. The direct final rule amendments incorporate by reference the "Paint Filter Liquids Test" of EPA Method 9095A in EPA Publication SW-846, "Methods for Evaluating Solid Waste, Physical/Chemical Methods (Revision 1, December 1996). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Method 9095A. The search and review results have been documented and placed in the docket for public review.

J. Congressional Review Act

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

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publication of the direct final 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).

**List of Subjects in 40 CFR Part 63**

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

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Dated:

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Stephen L. Johnson,  
Acting Administrator

For the reasons stated in the preamble, title 40, chapter I, part 63 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 A--[AMENDED]**

2. Section 63.14 is amended by adding new paragraph (k)(2) to read as follows:

§63.14 Incorporations by reference.

\* \* \* \* \*

(k) \* \* \*

(2) Method 9095A, "Paint Filter Liquids Test," (Revision 1, December 1996) as published in EPA Publication SW-846: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, IBR approved for §§63.7700(b) and 63.7765.

**Subpart EEEEE--[AMENDED]**

3. Section 63.7700 is amended by:

- a. Revising paragraph (a)
- b. Revising paragraph (b)
- c. Revising paragraph (c)(1)

- d. Revising paragraph (c)(3)(i)
- e. Adding paragraph (c)(3)(iv)

The revisions and additions read as follows:

§63.7700 What work practice standards must I meet?

(a) For each segregated scrap storage area, bin or pile, you must either comply with the certification requirements in paragraph (b) of this section, or prepare and implement a plan for the selection and inspection of scrap according to the requirements in paragraph (c) of this section. You may have certain scrap subject to paragraph (b) of this section and other scrap subject to paragraph (c) of this section at your facility provided the scrap remains segregated until charge make-up.

(b) You must prepare and operate at all times according to a written certification that the foundry purchases and uses only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids. For the purpose of this paragraph (b), "free organic liquids" is defined as material that fails the paint filter test by EPA Method 9095A, "Paint Filter Liquids Test" in EPA Publication SW-846 (Revision 1,

December 1996), "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (incorporated by reference--see §63.14). Any post-consumer engine blocks, post-consumer oil filters, or oily turnings that are processed and/or cleaned to the extent practicable such that the materials do not include lead components, mercury switches, plastics, or free organic liquids can be included in this certification.

(c) \* \* \*

(1) A materials acquisition program to limit organic contaminants according to the requirements in paragraph (c)(1)(i) or (ii) of this section, as applicable.

\* \* \* \* \*

(3) \* \* \*

(i) The inspection procedures must identify the location(s) where inspections are to be performed for each type of shipment. Inspections may be performed at the scrap supplier's facility. The selected location(s) must provide a reasonable vantage point, considering worker safety, for visual inspection.

\* \* \* \* \*

(iv) If the inspections are performed at the scrap supplier's facility, the inspection procedures must include an explanation of how the periodic inspections ensure that

not less than 10 percent of scrap purchased from each supplier is subject to inspection.

\* \* \* \* \*

4. Section 63.7735 is amended by revising paragraph (a) to read as follows:

§63.7735 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each iron and steel foundry subject to the certification requirement in §63.7700(b), you have demonstrated initial compliance if you have certified in your notification of compliance status that: "At all times, your foundry will purchase and use only metal ingots, pig iron, slitter, or other materials that do not include post-consumer automotive body scrap, post-consumer engine blocks, post-consumer oil filters, oily turnings, lead components, mercury switches, plastics, or free organic liquids."

\* \* \* \* \*

5. Section 63.7765 is amended by adding, in alphabetical order, a definition for the term, "Free organic liquids" to read as follows:

§63.7765 What definitions apply to this subpart?

\* \* \* \* \*

Free organic liquids means material that fails the

paint filter test by EPA Method 9095A (incorporated by reference--see §63.14). That is, if any portion of the material passes through and drops from the filter within the 5-minute test period, the material contains free liquids.

\* \* \* \* \*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2002-0034; FRL- ]

RIN 2060-AM85

**National Emission Standards for Hazardous Air Pollutants  
for Iron and Steel Foundries**

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

**ACTION:** Proposed rule; amendments.

**SUMMARY:** On April 22, 2004, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for iron and steel foundries. This proposed action would amend the work practice requirements for materials certification and scrap selection/inspection programs. The proposed amendments add clarification and flexibility but do not materially change the requirements of the rule.

In the Rules and Regulations section of this Federal Register, we are issuing these amendments as a direct final rule. We are making these amendments as a direct final rule without prior proposal because we view the revisions as noncontroversial and anticipate no adverse comments. We have explained our reasons for these revisions in the direct final rule amendments.

If we receive any significant, adverse comments on one or more distinct amendments in the direct final rule, we

will publish a timely notice of withdrawal in the Federal Register informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. If no significant adverse comments are received, no further action will be taken on this proposal, and the direct final rule will become effective as provided in that notice.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this Federal Register. For further supplementary information, see the direct final rule.

**DATES:** Comments. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE PROPOSED AMENDMENTS IN THE FEDERAL REGISTER], unless a hearing is held. If a hearing is held, comments must be received on or before [INSERT DATE 45 DAYS AFTER PUBLICATION OF THE PROPOSED AMENDMENTS IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2002-0034, by one of the following methods:

- Federal eRulemaking Portal:  
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://www.epa.gov/edocket>.

EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket, Docket ID OAR-2002-0034, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: U.S. EPA, 1301 Constitution Ave., NW, Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR-2002-0034. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly

available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, Docket ID No. OAR-2002-0034, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cavender, Emissions, Monitoring and Analysis Division (C339-02), Office of Air Quality Planning and Standards, EPA, Research Triangle Park, NC 27711, telephone number (919) 541-2364, fax number (919) 541-1903, e-mail address: [cavender.kevin@epa.gov](mailto:cavender.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Industry . . . . .	331511 .	Iron foundries. Iron and steel plants. Automotive and large equipment manufacturers.
	331512 .	Steel investment foundries.
	331513 .	Steel foundries (except investment).
Federal government . . . . .		Not affected.

State/local/tribal  
government . . . . . Not affected.

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<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in §63.7682 of the NESHAP for iron and steel foundries. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

Comments. Do not submit information containing CBI to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR-2004-0034. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the

information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by [INSERT DATE 10 DAYS AFTER PUBLICATION OF THE PROPOSED AMENDMENTS IN THE FEDERAL REGISTER], a public hearing will be held on [INSERT DATE 14 DAYS AFTER PUBLICATION OF THE PROPOSED AMENDMENTS IN THE FEDERAL REGISTER]. If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby.

## **I. Statutory and Executive Order Reviews**

For information regarding other statutory and executive order reviews associated with this action, please see the direct final rule amendments located in the Rules and Regulations section of today's Federal Register.

### **A. Paperwork Reduction Act**

This proposed action does not impose any new information collection burden. The Office of Management and Budget has previously approved the information collection requirements contained in the existing rule (40 CFR part 63, subpart EEEEE) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0543, EPA ICR number 2096.02. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed amendments on small entities, small entity is

defined as: (1) a small business according to the U.S. Small Business Administration size standards for NAICS codes 331511, 331512, and 331513 of 500 or fewer employees; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The proposed amendments would clarify the rule requirements

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Iron and Steel Foundries; Proposed Amendments  
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to reduce compliance uncertainties. The changes do not impose new costs or requirements.

Although the proposed rule amendments would not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed amendments on small entities. We held meetings with the petitioners to discuss the proposed amendments and have included provisions that address their concerns. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

**List of Subjects in 40 CFR Part 63**

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

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Dated:

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Stephen L. Johnson  
Acting Administrator