

The EPA Administrator, E. Scott Pruitt, signed the following notice on 08/11/2017, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2016-0442. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2016-0442; FRL-]

RIN 2060-AT57

National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry: Alternative Monitoring Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Good Cause Final Rule

SUMMARY: The U.S. Environmental Protection Agency (EPA) published a direct final rule in the **Federal Register** on June 23, 2017 titled National Emission Standards for Hazardous Air Pollutants (NESHAP) From the Portland Cement Manufacturing Industry: Alternative Monitoring Method. This final rule removes the provisions that were added in the June 23, 2017, direct final rule and restores the provisions that were deleted in that rule.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Storey, Sector Policies and Programs Division (D243-04), Office of Air Quality Planning and Standards, U.S.

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SUPPLEMENTARY INFORMATION:

I. Why is EPA taking this action?

On June 23, 2017, the EPA published a direct final rule to amend the National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (Portland Cement NESHAP) to allow an alternative monitoring method to be used to comply with hydrogen chloride (HCl) emissions standards (82 FR 28562). We stated in that direct final rule that if we received adverse comment by July 3, 2017, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. At the same time, we published a parallel proposal, which proposed to make the same changes that were made in the direct final rulemaking (82 FR 28616). We subsequently received adverse comment on the direct final rule and the parallel proposal, but were unable to withdraw the direct final rule in a timely manner. In this notice, we are taking final action to remove the provisions that were added to the Portland Cement NESHAP in the direct final rule and restoring the provisions that were deleted in that rule. This action will, thus, undo the changes made by the direct final rule. We are concurrently publishing a rule re-proposing and providing additional opportunity for public comment on the same amendment for the Portland Cement NESHAP that was proposed on June 23, 2017.

Although the EPA did provide an opportunity for public comment on the parallel proposal, the EPA also finds that there is “good cause” under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make the amendments discussed in this final rule without prior notice and comment. For this rule, notice and comment is unnecessary because it simply implements an action that the EPA indicated it would take if it received adverse comment on the direct final rule. The record for the provisions being restored is the same record that supported those provisions in the first instance and that was previously subject to notice and comment. These actions are effective as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL**

REGISTER].

II. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart LLL) and has assigned OMB control number 2060-0416. This action does not change the information collection requirements.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. The rule is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does 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.

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

This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA is aware of one tribally owned Portland cement facility currently subject to 40 CFR part 63, subpart LLL that will be subject to this final rule. However, the provisions of this final rule are not expected to impose new or substantial direct compliance costs on tribal governments since the provisions in this direct final rule are extending the use of an alternative to the HCl monitoring provisions, including an option which provides operational flexibility. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does **not** have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

This action does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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Manufacturing Industry: Alternative Monitoring Method**

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List of Subjects in 40 CFR Part 63

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

Dated: _____.

E. Scott Pruitt,
Administrator.

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For the reasons stated in the preamble, the Environmental Protection Agency is amending title

40, chapter I, part 63 of the Code of Federal Regulations (CFR) as follows:

**PART 63 — NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES**

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

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

**Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the
Portland Cement Manufacturing Industry**

2. Section 63.1349 is amended by adding paragraph (b)(6)(v)(H) to read as follows:

§ 63.1349 Performance testing requirements.

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(b) * * *

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(6) * * *

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(v) * * *

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(H) This section 63.1349(6)(v) alternative expires on July 25, 2017 at which time the owner or operator must demonstrate compliance with paragraphs (b)(6)(i), (ii), or (iii).

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3. Section 63.1350 is amended by revising paragraph (l)(4) to read as follows:

§ 63.1350 Monitoring requirements.

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(1) * * *

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(4) If you monitor continuous performance through the use of an HCl CPMS according to paragraphs (b)(6)(v)(A) through (H) of §63.1349, for any exceedance of the 30 kiln operating day HCl CPMS average value from the established operating limit, you must:

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