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Part V

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Miscellaneous
Coating Manufacturing; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0178; FRL–8011–6]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On May 13, 2005 (70 FR 25676), EPA issued direct final rule amendments and a parallel proposal to provide additional compliance options for the national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Coating Manufacturing. One proposed amendment specified that compliance with the weight percent hazardous air pollutant (HAP) limit in coatings products may be demonstrated based on formulation data. However, the

proposed amendment did not include *de minimis* limits for HAP in formulation data as allowed in other surface coating NESHAP. Due to adverse comment, we withdrew that provision of the direct final, and we are now issuing final amendments to specify that certain raw material formulation data as supplied to coating manufacturers may be used to demonstrate compliance with the weight percent HAP limit.

DATES: *Effective Date:* December 21, 2005.

ADDRESSES: Docket ID No. OAR–2003–0178 contains supporting information used in developing the NESHAP. All documents in the docket are listed in the EDOCKET index at <http://docket.epa.gov/edkpub/index.jsp>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 at the Air and Radiation Docket, 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. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), Office of Air Planning and Standards, EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS*	Examples of regulated entities
Industry	3255, 3259	Manufacturers of paints, coatings, adhesives, or inks.

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of the rule, as well as in today's amendment to the definitions sections. If you have questions regarding the applicability of the amendments 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 the final rule amendments will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule amendments will be posted 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.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule

amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 21, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the 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 final rule amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

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

- I. Background
- II. Response to Comments
- III. 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 for Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

- I. National Technology Transfer and Advancement Act
- J. Congressional Review Act

I. Background

On December 11, 2003, we issued the NESHAP for miscellaneous coating manufacturing (40 CFR part 63, subpart HHHHH). Subpart HHHHH applies to equipment and processes involved in the manufacturing of coatings, such as paints, inks, and adhesives.

On May 13, 2005, we issued direct final rule amendments (70 FR 25676) and a parallel proposal (70 FR 25864) to amend subpart HHHHH. We stated in the direct final rule that if we received adverse comment by June 13, 2005, we would publish a timely withdrawal in the **Federal Register**.

We subsequently received adverse comments from two commenters on one provision and, accordingly, withdrew paragraph (b)(4) in 40 CFR 63.8055 (70 FR 38780). The remaining provisions, for which we did not receive any adverse comments, became effective on July 12, 2005. After consideration of the comments, we are promulgating the final rule amendments based on the parallel proposal published on May 13, 2005.

II. Response to Comments

The direct final rule amendments published on May 13, 2005, included amendments that allow formulation data to be used as an alternative to test data for demonstrating compliance with the 5 percent HAP limit in 40 CFR part 63, subpart HHHHH. The intent was to make the compliance options for the miscellaneous coating manufacturing NESHAP consistent with options for other surface coating rules. For example, 40 CFR part 63, subpart MMMM, the NESHAP for surface coating of miscellaneous metal parts and products, has a compliant materials option that requires the owner or operator of the surface coating operation to determine the mass fraction of organic HAP for each coating. One method of determining this mass fraction is to use formulation data from the supplier or manufacturer. However, unlike the option in the other surface coating rules, the formulation data option in the direct final rule amendments to subpart HHHHH did not have mass cutoffs of 0.1 percent for carcinogens as defined by Occupational Safety and Health Administration (OSHA) or 1 percent for other HAP because subpart HHHHH does not establish cutoffs for trace materials or impurities.

The commenters objected to this direct final rule amendments and pointed out that the amendments did not allow for mass cutoffs reported in Material Safety Data Sheets (MSDS), which require reporting of quantities of materials based on limits of 0.1 percent for carcinogens and 1 percent for other HAP; and/or other technical reports supplied by the coating manufacturers that use these reporting quantities. These limits account for trace constituents and impurities in materials. These reporting limits are used when raw material and product formulations are supplied to paint and coating manufacturers and, in turn, supplied to their customers. One of the commenters also pointed out that to disallow the use of these *de minimis* reporting levels effectively renders the option useless because raw material data and manufacturer formulations are not reported below these limits. Further, without this allowance, the miscellaneous coating manufacturing NESHAP would create an inherent inconsistency between manufacturer certifications under the surface coatings NESHAP (recordkeeping and reporting for downstream users) and potential certification (recordkeeping and reporting) for this option under the

miscellaneous coating manufacturing NESHAP.

We appreciate the commenter's request to minimize the compliance burden and allow exemptions for impurities and trace constituents. We agree that the proposed rule amendment allowing formulation data should be a practical option that reduces the compliance burden on both the regulated industry and the permitting authorities.

We do not agree with the commenter regarding consistency between compliance with other surface coating NESHAP and the miscellaneous coating manufacturing NESHAP. The formats of the standards in other surface coating rules are different than the format of the standard in the coating manufacturing rule. Although we considered formulation data in development of the standards for the other surface coating NESHAP, for coating manufacturing, we only considered emissions reduction techniques in development of standards. The 5 percent HAP limit in the miscellaneous coating manufacturing NESHAP was intended as a pollution prevention option that provides a level of control more stringent than the emissions standards. Nevertheless, we have considered lessons learned in the development of surface coating rules and, in that light, we tried to be consistent. In the other surface coating rules, we have not required raw material providers to perform complete analyses of their products to quantify impurities or trace constituents, nor have we considered any requirements that might force raw material providers to change their raw material specifications. We understand that use of MSDS sheets as formulation data would mean that a HAP, such as toluene at 0.5 percent of the material by mass, may be present in the raw material yet not be considered in the 5 percent HAP limit compliance demonstration. However, because a limited number of trace HAP are used in coating manufacturing and trace compounds in raw materials will only become more dilute in the final coating, we believe formulation data with the MSDS *de minimis* limits for trace compounds are adequate to conform with the intended pollution prevention alternative and demonstrate compliance with the 5 percent HAP limit.

We do not agree, however, that the MSDS information for a coating product provided by the coating manufacturer is a legitimate basis for determining compliance with the 5 percent HAP limit. A manufacturer can estimate the HAP content of the coating by formulation data from the raw material supplier.

Therefore, we are promulgating a final rule amendment that allows compliance with the 5 percent HAP limit using formulation data from suppliers, if the formulation data represent each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, and at 1.0 percent by mass or more for other HAP. Only formulation data from raw material suppliers shall be used to demonstrate compliance with the 5 percent HAP limit.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action gives a source owner or operator the option of using vapor balancing to comply with the standards. Since it is only an option, this action will not increase the information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0535 (EPA ICR No. 2115.01).

Copies of the information collection request (ICR) document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR or OMB number in any correspondence.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

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 purposes of assessing the impacts of today's direct final rule amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325 that has up to 500; (2) a small governmental 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 is not dominant in its field.

After considering the economic impacts of today's amendments on small entities, 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. The final rule amendments will not impose any requirements on small entities. The final rule amendments add a compliance option granting greater flexibility to small entities subject to the final rule that may result in a more efficient use of resources for them and, therefore, impose no additional regulatory costs or requirements on owners or operators of affected sources.

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 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 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. Therefore, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rule amendments do not significantly or uniquely affect small governments. The final rule amendments provide a source owner or operator with additional options to comply with the standards and contain no requirements that apply to small governments. Therefore, the 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 the 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. 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. The final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the 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. The final rule amendments provide a source owner or operator with another option to comply with the standards and, therefore, impose no additional burden on sources. Thus, Executive Order 13175 does not apply to the 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 the 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 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. Today’s 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.

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

The 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 and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are cited in the final rule amendments. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the final rule amendments.

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 the 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 publication of the direct final rule in the **Federal Register**. The final rule amendments are not a “major rule” as defined by 5 U.S.C. 804(2). The final rule amendments are effective on December 21, 2005.

List of Subjects in 40 CFR Part 63

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

Dated: December 15, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the 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 HHHHH—[Amended]

■ 2. Section 63.8055 is amended by adding paragraph (b)(4) to read as follows:

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

* * * * *

(b) * * *

(4) You may rely on formulation data from raw material suppliers if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other compounds. If the HAP weight percent estimated based on formulation data conflicts with the results of a test conducted according to paragraphs (b)(1) through (3) of this section, then there is a rebuttal presumption that the test results are accurate unless, after consultation, you demonstrate to the satisfaction of the permitting authority that the test results are not accurate and that the formulation data are more appropriate.

[FR Doc. 05–24300 Filed 12–20–05; 8:45 am]

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