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Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0178; FRL–7911–1]

RIN 2060–AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On December 11, 2003, EPA published national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Coating Manufacturing. The direct final rule amends the NESHAP by providing additional compliance options and clarifications. Specifically, the direct final rule amendments specify that compliance with a percent reduction emission limit may be demonstrated by measuring total organic compounds (TOC), compliance with the weight percent hazardous air pollutant (HAP) limit in coatings products may be demonstrated based on formulation data, and the cover or lid on a process vessel may be opened for material additions and sampling. The direct final rule amendments also clarify the requirements for cleaning operations, the compliance date for equipment that is added to an existing source, the conditions under which you must determine whether an emission stream is a halogenated vent stream, and the terminology used to describe the emission limits for process vessels. The direct final rule amendments also revise the definition of Group 2 transfer operations to clarify that all product loading operations are part of the miscellaneous coating manufacturing affected source and, thus, are not subject to the organic liquid distribution (OLD) NESHAP. We are making the amendments by direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule amendments are effective on July 12, 2005 without further notice, unless EPA receives adverse written comment by June 13, 2005 or if a public hearing is requested by May 23, 2005. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0178, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *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: *air-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, 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.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2003–0178. 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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

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 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, U.S. 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	Manufacturers of coatings, including inks, paints, or adhesives.

* 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 amendments to the applicability 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 direct 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 direct 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. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Comments. We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. In the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that timely adverse comments are received.

If we receive such adverse comments on the amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the direct 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 July 12, 2005. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

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

I. Why Are We Amending the Rule?

On December 11, 2003, we published NESHAP for Miscellaneous Coating Manufacturing as subpart HHHHH in 40 CFR part 63 (68 FR 69164). Since publication of the final rule, we concluded that additional means of demonstrating compliance with the percent reduction emission limits and the weight percent HAP limit in coating products would be as effective as the options specified in the final rule. We also realized that the standards for process vessels needed to allow opening of covers and lids for material addition and sampling, or significantly more complex and costly processing equipment than we intended would be needed to comply with the final rule. Finally, we determined that several minor amendments to regulatory provisions were necessary to clearly convey our intent.

II. What Amendments Are We Making to the Rule?

Amendments to Requirements for Cleaning Operations. The direct final rule revises § 63.8005(a) to clarify that you must meet the emission limits and work practice standards in Table 1 to subpart HHHHH for cleaning operations only if the cleaning operations are performed automatically; no control is required for cleaning operations that are performed manually. This amendment is needed to make the final rule consistent with our intent as stated in the preamble to the final rule (68 FR 69164, 69172) that control is required for automatic cleaning operations, but not required for manual cleaning operations.

Amendments to Compliance Date for Equipment Added to an Existing Source. Section 63.7995(c) was intended to clarify that equipment added to an existing affected source would be subject to existing source requirements immediately upon startup, if installed after the compliance date. However, the final rule mistakenly referred to the publication date rather than the compliance date. We have also determined that this statement is not needed in the final rule because it is redundant with §§ 63.5(b)(6) and 63.6(c) of the General Provisions to 40 CFR part 63. Therefore, this direct final rule removes and reserves § 63.7995(c). To be clear, under §§ 63.5(b)(6) and 63.6(c), and Table 10 to subpart HHHHH, any equipment added to an existing affected source between December 11, 2003 and the compliance date does not have to comply until the compliance date.

Amendments to Requirements for Performance Tests. The final rule (see § 63.8000(c)) specifies that the performance testing procedures in § 63.997 of 40 CFR part 63, subpart SS, are to be used to demonstrate compliance with the emission limits. However, the option in § 63.997(e)(2)(iv) of demonstrating compliance with a percent reduction emission limit by measuring TOC is prohibited by § 63.8000(d)(1)(v) of the final rule. Since promulgation, we have determined that this restriction is unwarranted because § 63.997(e)(2)(iv)(G) and (H) describe procedures for using Methods 25 and 25A of 40 CFR part 60, appendix A, for measuring TOC. Therefore, the direct final rule removes § 63.8000(d)(1)(v). As a result of this change, the amended rule allows compliance with a percent reduction emission limit to be demonstrated by measuring either total organic HAP or TOC as specified in § 63.997(e)(2)(iv).

Amendments to Procedures for Demonstrating Compliance with the Weight Percent HAP Limit in Coatings. The direct final rule allows formulation data of the ingredients used to manufacture a coating to be used as an alternative to test data for demonstrating compliance with the 5 weight percent HAP limit in § 63.8055. This provision states that as an alternative to complying with the requirements in Table 1 to subpart HHHHH for each individual stationary process vessel at an existing source, you may comply with a 5 weight percent HAP limit for process vessels at your affected source that are used to manufacture coatings with a HAP content of less than 0.05 kg per kg product, as specified in § 63.8055(b). We are issuing this amendment to make the compliance options for subpart HHHHH consistent with options for 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 manufacturer (*i.e.*, the source that is subject to subpart HHHHH). Including the formulation data option in subpart HHHHH also provides a less burdensome alternative to testing. However, if the formulation data and test data are inconsistent, there is a rebuttal presumption that the test data are accurate unless you can demonstrate that they are not, and that the formulation data are more appropriate for your unit(s). Also note that, unlike the option in the surface coating rules, the formulation data option in this direct final rule does not have mass cutoffs of 0.1 percent for OSHA-defined carcinogens or 1 percent for other HAP because subpart HHHHH does not establish cutoffs for trace materials or impurities.

Amendments to the Standards for Process Vessels. The direct final rule makes several amendments to the standards for portable and stationary process vessels in Table 1 to subpart HHHHH. One amendment in Table 1 is to allow the cover or lid to be opened for material additions and sampling. Sampling includes quality assurance inspections. Without this amendment, owners and operators would have to install costly materials handling equipment for solids that are added to the batch. Such equipment was not observed in the industry and not considered in our cost analysis, and we did not intend to require it. A second amendment was to clarify that the percent reduction in Table 1 applies to the collective HAP, not each individual HAP. In our database, the reported control efficiencies were not speciated. Thus, this amendment makes the final rule consistent with our analysis of the MACT floor and the regulatory alternative. A third amendment was to clarify that the emission limits in Table 1 apply to organic HAP, not total HAP. This clarification makes these items consistent with the other items in the table that already refer to total organic HAP.

Amendments to Definition of Group 2 Transfer Operations. The direct final rule expands the definition of Group 2 transfer operations to include filling of containers such as cans, drums, and totes. This amendment is needed to clarify that filling of these containers is part of the miscellaneous coating manufacturing affected source and, thus, is not subject to the OLD MACT.

Section 63.7985(b)(4) of subpart HHHHH specifies that transfer racks are part of the miscellaneous coating operations, and § 63.7990(b) specifies that the miscellaneous coating manufacturing operations are the affected source under subpart HHHHH. The definitions of ''Group 1 transfer operations'' and ''Group 2 transfer operations'' in the final rule make it clear that bulk loading (*i.e.*, filling tank trucks and railcars) is performed using transfer racks, but it is not clear if these definitions include transfer operations that involve filling of containers such as cans, drums, and totes. Thus, the final rule's silence might be interpreted to mean that filling of containers is not a transfer operation and is not part of the affected source under subpart HHHHH. Under this interpretation, filling of containers would then be subject to the OLD NESHAP because § 63.2338(c)(1) of the OLD NESHAP exempts transfer racks that transfer organic liquids only if they are part of an affected source under another NESHAP in 40 CFR part 63. We did not intend to regulate filling of containers with coating products under the OLD NESHAP.

The final rule defines Group 2 transfer operations as bulk loading (*i.e.*, filling of tank trucks or railcars) that does not meet the definition of Group 1 transfer operations. In our analysis of the MACT floor for transfer operations, we considered the filling of small containers as well as bulk loading. We determined the MACT floor for all loading was no emissions reduction. We then developed a regulatory alternative consisting of control for bulk loading when the coating products contain more than 3.0 million gallons per year of HAP with a weighted average HAP partial pressure greater than or equal to 1.5 psia. These were the only conditions under which the total impacts of control were considered reasonable. However, since we examined all product filling operations, those operations should be part of the affected source. Thus, this direct final rule revises the definition of Group 2 transfer operations to mean ''bulk loading of coating products that does not meet the definition of Group 1 transfer operations, and all loading of coating products from a loading rack to other types of containers such as cans, drums, and totes.'' This change makes it clear that containers are filled at a transfer rack. Since all transfer racks (both Group 1 and Group 2) are part of the affected source under subpart HHHHH, this change also clarifies that filling of containers with coating products will be exempt from the requirements of the OLD NESHAP.

Clarification of Requirement to Determine Halogenated Vent Streams. The direct final rule revises the language in § 63.8000(b)(1) to clarify the conditions under which you must determine if an emission stream is a halogenated vent stream. This clarification is needed to make the language in § 63.8000(b)(1) consistent with the language in Table 1 to subpart HHHHH.

To minimize combustion control device-generated emissions of hydrogen halide and halogen HAP, Table 1 to subpart HHHHH requires a halogen reduction device either before or after a combustion device that is used to control a halogenated vent stream (*i.e.*, an emission stream that contains halogen atoms in organic compounds at concentrations greater than or equal to 20 parts per million by volume (ppmv)). Section 63.8000(b)(1), however, currently requires you to determine if each vent stream is a halogenated vent stream. This is unnecessary because no hydrogen halide or halogen HAP would be formed if the halogenated organic compound is controlled using a noncombustion control device. Thus, this direct final rule revises the language in § 63.8000(b)(1) to specify that you must determine if an emission stream meets the definition of a halogenated vent stream if it contains halogen atoms, and the organic compounds in the emission stream are controlled using a combustion control device (excluding flares).

Clarification of Equipment Leak Inspection Requirements. One of the compliance options for equipment leaks is to inspect the equipment in accordance with the procedures described in 40 CFR part 63, subpart R (National Emission Standards for Gasoline Distribution Facilities), except as specified in § 63.8015(b). The intent of § 63.8015(b) is to clarify how language in § 63.424(a) that is specific to gasoline distribution operations should be interpreted for application to miscellaneous coating manufacturing operations. Since publication of the final rule, we realized that the language did not clearly describe when the inspections must be performed. Therefore, this direct final rule revises § 63.8015(b) to further clarify the language in § 63.424(a) to make it applicable to miscellaneous coating manufacturing sources.

Clarification of overlapping standards. EPA is taking this opportunity to clarify its discussion in the preamble to the final rule regarding how to determine whether 40 CFR part 63, subpart FFFF or subpart HHHHH, applies when equipment is used to produce both subpart FFFF and HHHHH products. In the preamble to the final rule, we stated:

In the event that equipment used to manufacture products in processes that are subject to 40 CFR part 63, subpart FFFF is also used for coating manufacturing operations that are subject to subpart HHHHH, then the primary use of the equipment determines applicability.

This explanation, however, is partially inconsistent with subpart FFFF. Pursuant to subpart FFFF, the primary use of nondedicated multipurpose equipment only dictates which regulation governs where a process unit group (PUG) has been developed under 40 CFR part 63, subpart FFFF, § 63.2535(l), and the primary product is a subpart FFFF, a subpart GGG, or a subpart MMM product. Where one of these products is the primary product, the primary product determines which regulation applies to each miscellaneous organic chemical process unit (MCPU). Where a subpart FFFF product is the primary product of the PUG, subpart FFFF may be complied with for all process units in the PUG in lieu of other 40 CFR part 63 rules.

Where the primary product of the PUG is subject to regulation under any 40 CFR part 63 regulation, other than subpart FFFF, MMM or GGG, then § 63.2535(l)(3)(ii)(C) dictates that subpart FFFF applies to ''each MCPU in the PUG.'' Otherwise, the regulation applicable to the other product (this would be the primary product if there are only two products) applies to the PUG. Accordingly, if a PUG has been developed, any process unit that is used to produce both a subpart FFFF and subpart HHHHH product must comply with subpart FFFF for the MCPU. Where a PUG has not been developed, the product of the process generally determines applicability, not primary use.

Miscellaneous Technical Corrections. The direct final rule includes several changes to correct references and typesetting errors. These changes are described in Table 1 in this preamble.

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART HHHHH

Section in subpart HHHHH	Description of correction
§ 63.8000(c)	Adds underlining to section heading.
§ 63.8000(d)(1)(iii)	Replaces reference to ''Tables 1 through 7'' with reference to ''Tables 1 through 6''.
§ 63.8050(c)(1)(ii)	Clarifies that the saturation factors must be calculated for condensable compounds, not noncondensable compounds.
§ 63.8050(c)(3) introductory text	Replaces the reference to paragraph (c)(2)(i) with a reference to paragraph (c)(3)(i).
Table 7 to subpart HHHHH	Replaces the incorrect CAS number with the correct CAS number for tetrachloroethylene.
Table 8 to subpart HHHHH	Revises the title to refer to subpart HHHHH rather than subpart FFFF, and replaces the incorrect CAS number with the correct CAS number for 1,1-dimethyl hydrazine.

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 direct 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. The direct final rule amendments will not impose any requirements on small entities. The final rule amendments add several compliance options 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 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 the private sector in any 1 year. The direct final rule amendments provide a source owner or operator with additional options to comply with the standards. Therefore, the direct final rule amendments are not subject to the requirements of sections 202 and 205 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 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. The direct 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 direct final rule amendments.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on the direct final rule amendments from State and local officials.

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 direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. The direct 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 direct final rule amendments.

The EPA specifically solicits additional comment on the direct final rule amendments from tribal officials.

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 direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the direct 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 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 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 direct final rule amendments. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the direct 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 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 publication of the direct final rule in the **Federal Register**. The direct final rule amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2).

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: May 6, 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 63.7995 is amended by removing and reserving paragraph (c).

■ 3. Section 63.8000 is amended by:

■ a. Revising paragraph (b)(1);

■ b. Revising paragraph (c) heading; and

■ c. Revising paragraph (d)(1).

The revisions read as follows:

§ 63.8000 What are my general requirements for complying with this subpart?

* * * * *

(b) * * *

(1) If an emission stream contains halogen atoms, and you use a combustion-based control device (excluding a flare) to meet an organic HAP emission limit, you must determine whether the emission stream meets the definition of a halogenated stream by calculating the concentration of each organic compound that contains halogen atoms using the procedures specified in § 63.115(d)(2)(v), multiplying each concentration by the number of halogen atoms in the organic compound, and summing the resulting halogen atom concentrations for all of the organic compounds in the emission stream. Alternatively, you may elect to designate the emission stream as halogenated.

* * * * *

(c) *Compliance requirements for closed vent systems and control devices.* * * *

* * * * *

(d) *Exceptions to the requirements specified in other subparts of this part 63.* (1) *Requirements for performance tests.* The requirements specified in paragraphs (d)(1)(i) through (v) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of 40 CFR part 63.

(i) Conduct gas molecular weight analysis using Method 3, 3A, or 3B in appendix A to 40 CFR part 60.

(ii) Measure moisture content of the stack gas using Method 4 in appendix A to 40 CFR part 60.

(iii) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A, to comply with any of the emission limits specified in Tables 1 through 6 to this subpart, you may use Method 320 of 40 CFR part 60, appendix A. When using Method 320, you must follow the analyte spiking procedures of section 13 of Method 320, unless you demonstrate that the complete spiking procedure has been conducted at a similar source.

(iv) Section 63.997(c)(1) does not apply. For the purposes of this subpart, results of all initial compliance demonstrations must be included in the notification of compliance status report, which is due 150 days after the compliance date, as specified in § 63.8075(d)(1).

(v) If you do not have a closed-vent system as defined in § 63.981, you must determine capture efficiency using Method 204 of appendix M to 40 CFR part 51 for all stationary process vessels subject to requirements of Table 1 to this subpart.

* * * * *

■ 4. Section 63.8005 is amended by revising paragraph (a) to read as follows:

§ 63.8005 What requirements apply to my process vessels?

(a) *General.* (1) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to you, and you must meet each applicable requirement specified in § 63.8000(b), except as specified in paragraphs (a)(1)(i) and (ii) of this section.

(i) You are not required to meet the emission limits and work practice standards in Table 1 to this subpart if you comply with § 63.8050 or § 63.8055.

(ii) You must meet the emission limits and work practice standards in Table 1 to this subpart for emissions from automatic cleaning operations. You are not required to meet the emission limits and work practice standards in Table 1 to this subpart for emissions from cleaning operations that are conducted manually.

(2) For each control device used to comply with Table 1 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraphs (b) through (g) of this section.

* * * * *

■ 5. Section 63.8015 is amended by revising paragraph (b) to read as follows:

§ 63.8015 What requirements apply to my equipment leaks?

* * * * *

(b) *Exceptions to requirements in § 63.424(a).* (1) When § 63.424(a) refers to ''a bulk gasoline terminal or pipeline breakout station subject to the provisions of this subpart,'' the phrase ''a miscellaneous coating manufacturing affected source subject to 40 CFR part 63, subpart HHHHH'' shall apply for the purposes of this subpart.

(2) When § 63.424(a) refers to ''equipment in gasoline service,'' the phrase ''equipment in organic HAP service'' shall apply for the purposes of this subpart.

(3) When § 63.424(a) specifies that ''each piece of equipment shall be inspected during loading of a gasoline cargo tank,'' the phrase ''each piece of equipment must be inspected when it is operating in organic HAP service'' shall apply for the purposes of this subpart.

(4) Equipment in service less than 300 hours per year, equipment in vacuum

service, or equipment contacting non-process fluids is excluded from this section.

* * * * *

■ 6. Section 63.8050 is amended by:

■ a. Revising the fifth sentence in paragraph (c)(1)(ii); and

■ b. Revising paragraph (c)(3) introductory text.

The revisions read as follows:

§ 63.8050 How do I comply with emissions averaging for stationary process vessels at existing sources?

* * * * *

(c) * * *

(1) * * *

(ii) * * * Note that for multi-component emission streams, saturation factors must be calculated for all condensable compounds, not just the HAP. * * *

* * * * *

(3) Determine actual emissions in pounds per batch for each vessel in accordance with paragraph (c)(3)(i), (ii), or (iii) of this section, as applicable.

* * * * *

■ 7. Section 63.8055 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(b) You may only comply with the alternative during the production of coatings that contain less than 5 weight percent HAP, as determined using any of the procedures specified in paragraphs (b)(1) through (4) of this section.

(1) Method 311 (appendix A to 40 CFR part 63).

(2) Method 24 (appendix A to 40 CFR part 60). You may use Method 24 to determine the mass fraction of volatile matter and use that value as a substitute for the mass fraction of HAP.

(3) You may use an alternative test method for determining mass fraction of HAP if you obtain prior approval by the Administrator. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) You may rely on formulation data. 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.

* * * * *

■ 8. Section 63.8105 is amended by revising the definition in paragraph (g) for *Group 2 transfer operations* to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Group 2 transfer operations means bulk loading of coating products that does not meet the definition of Group 1 transfer operations, and all loading of coating products from a loading rack to other types of containers such as cans, drums, and totes.

* * * * *

■ 9. Table 1 to subpart HHHHH is amended by revising entries ''1,'' ''2,'' and ''3'' to read as follows:

TABLE 1 TO SUBPART HHHHH OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

* * * * * * *

For each . . .	You must . . .	And you must . . .
1. Portable process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling.	Nonapplicable.
2. Stationary process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling; or	i. Considering both capture and any combination of control (except a flare), reduce emissions of organic HAP with a vapor existing pressure ≥0.6 kPa by ≥75 percent by weight, and reduce emissions of organic HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight.
	b. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling.	i. Reduce emissions of organic HAP with a vapor pressure ≥0.6 kPa by ≥75 percent by weight, and reduce emissions of organic HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight, by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <10 °C if the process vessel contains HAP with a partial pressure <0.6 kPa, or <2 °C if the process vessel contains HAP with a partial pressure ≥0.6 kPa and <17.2 kPa, or < −5 °C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

TABLE 1 TO SUBPART HHHHH OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each . . .	You must . . .	And you must . . .
3. Portable and stationary process vessel at a new source.	a. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling.	i. Reduce emissions of total organic HAP by ≥95 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: < −4 °C if the process vessel contains HAP with a partial pressure <0.7 kPa, or < −20 °C if the process vessel contains HAP with a partial pressure ≥0.7 kPa and <17.2 kPa, or < −30 °C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

■ 10. Table 7 to subpart HHHHH is amended by revising entry ''51'' to read as follows:

TABLE 7 TO SUBPART HHHHH OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
51. Tetrachloroethylene (perchloroethylene)	127184

TABLE 7 TO SUBPART HHHHH OF PART 63.—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.

■ 11. Table 8 to subpart HHHHH is amended by revising the heading and entry ''4'' to read as follows:

TABLE 8 TO SUBPART HHHHH OF PART 63.—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
4. Dimethyl hydrazine (1,1)	57147

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