

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[EPA-HQ-OAR-2008-0053; FRL-8983-5]

RIN 2060-AN47

**National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is issuing national emission standards for control of hazardous air pollutants (HAP) for the Paints and Allied Products Manufacturing area source category. The final rule establishes emission standards in the form of management practices for volatile HAP, and emission standards in the form of equipment standards for particulate HAP. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the generally available control technology or management practices (GACT) for the area source category.

**DATES:** This final rule is effective on December 3, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2008-0053. All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 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.

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**SUPPLEMENTARY INFORMATION:** The supplementary information in this preamble is organized as follows:

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**I. General Information****A. Does this action apply to me?**

The regulated categories and entities potentially affected by this final rule are shown in the table below. You are subject to this subpart if you own or operate a facility that performs paints and allied products manufacturing that is an area source of hazardous air pollutant (HAP) emissions and processes, uses, or generates materials containing the following HAP: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel.

The paints and allied products manufacturing area source rule (CCCCCCC) covers all coatings, but does not include resin manufacturing, which is covered by the chemical manufacturing area source standard (VVVVVV). Facilities that manufacture both resins and coatings are required to comply with both rules. Paints and allied products are defined in Sec. 63.11607 as any material such as a paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, the industries that manufacture these products are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. The source category does not include the following: (1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents; (2) the manufacture of electroplated and electroless metal films; (3) the manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and allied products;<sup>1</sup> and (4) activities by end users of paints or allied products to ready those materials for application.

<sup>1</sup> Production of paint thinners and paint remover is covered under the Industrial Organic Chemical Manufacturing Area Source NESHAP, and electroplated and electroless metal films are

covered under the Plating and Polishing Operations Area Source NESHAP. Resins manufacturing is covered under the Plastic Materials and Resins Manufacturing Area Source NESHAP and pigments

manufacturing is covered under the Inorganic Pigment Manufacturing Area Source NESHAP.

Category	NAICS code <sup>2</sup>	Examples of regulated entities
Paint & Coating Manufacturing .....	325510	Area source facilities engaged in mixing pigments, solvents, and binders into paints and other coatings, such as stains, varnishes, lacquers, enamels, shellacs, and water repellant coatings for concrete and masonry.
Adhesive Manufacturing .....	325520	Area source facilities primarily engaged in manufacturing adhesives, glues, and caulking compounds.
Printing Ink Manufacturing .....	325910	Area source facilities primarily engaged in manufacturing printing inkjet inks and inkjet cartridges.
All Other Miscellaneous Chemical Product and Preparation Manufacturing.	325998	Area source facilities primarily engaged in manufacturing indelible ink, India ink writing ink, and stamp pad ink.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11599, subpart CCCCCC (NESHAP for Area Sources: Paints and Allied Products Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the state delegated authority or the EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

*B. Where can I get a copy of this document?*

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). A copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

*C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 1, 2010. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for

EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**II. Background Information for This Final Rule**

Section 112(d) of the Clean Air Act requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. EPA implemented these provisions in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA

identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the "30 urban HAP." A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants." Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101-228, December 20, 1989), which describes GACT as:

\* \* \* methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT. This is particularly important when developing regulations, like this one, that may impact many small businesses, as defined by the Small Business Administration.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we

<sup>2</sup> North American Industry Classification System.

consider the costs and economic impacts of available control technologies and management practices on that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for categories listed pursuant to section 112(c)(3) and (k) by November 16, 2009 (*Sierra Club v. Johnson*, no. 01–1537, D.D.C., March 2006).

### III. Summary of Changes Since Proposal

This final rule contains several revisions and clarifications to the proposed rule made after considering public comments. The following sections present a summary of the changes to the proposed rule. We explain the reasons for these changes in detail in the summary of comments and responses (section V of this preamble).

#### A. Applicability

We made several changes to clarify the applicability of this final rule. Specifically, we have clarified that the final rule does not include retail and commercial paints and allied products operations which add and mix pigments to pre-manufactured products per customer specifications.

We have revised the definition of “paints and allied products manufacturing” to exclude activities by end users of paints and allied products to ready those materials for application. We have also revised the definition of “paints and allied products manufacturing process” to exclude weighing, mixing, tinting, blending, diluting, stabilizing, or any other handling of these paints and allied products to ready these materials for use by end users.

Furthermore, we clarified the types of operations by end users that are not covered by this area source category. An end user is someone who applies a coating to substrate, similar to the Miscellaneous Coating Manufacturing major source rule (40 CFR part 63, subpart HHHHH). The final rule does not apply to activities conducted by end users of coating products in preparation for application (68 FR 69164, December 11, 2003). Thus, operations that modify a purchased coating prior to application at the purchasing facility are not included in the Paints and Allied Products Manufacturing area source category; this would apply only if the purchased product is already a coating that an end user could apply as purchased. The activities and operations described above are not subject to today’s rule because they were not part

of the listed source category under CAA section 112(c)(3).

In the proposed rule, we proposed that the affected source include the entire facility if the facility emitted any of the paints and allied products manufacturing target HAP. Specifically, under the proposal, all process vessels at the facility would be subject to the standards if any emissions source at the facility emitted one of the paints and allied products manufacturing target HAP.<sup>3</sup> After consideration of public comments, we modified the scope of applicability of this final rule, and we made several changes to clarify the applicability provisions. The most significant change is that only process vessels that emit one or more of the target HAP are subject to the rule.

#### B. Standards and Compliance Requirements

We have made several changes to the standards for paints and allied products manufacturing. For the metal HAP standards, we have revised the requirement to conduct an initial visible emission test by changing the test method from Method 9 to Method 203C. In addition we have revised the opacity standard from 5 percent opacity to 10 percent opacity. We have also removed the requirement to conduct additional visible emissions tests every six months. Instead, we have added quarterly Method 22 visible emission observations.

We have also extended the initial particulate control device testing date from 60 days to 180 days from the compliance date for an existing source, and 180 days of start-up of a new system.

We have removed the requirement to cover all process tanks with a lid or cover. Instead, only process vessels that contain benzene or methylene chloride will be required to be covered. In addition, we have added a provision to allow operators to open any vessel only to the extent necessary for quality control testing and product sampling, addition of materials, or product removal.

<sup>3</sup> In this preamble, we use the term “target HAP” to mean the urban HAP for which the paints and allied products manufacturing source category is listed under section 112(c)(3). Those HAP are benzene, methylene chloride, and compounds of cadmium, chromium, lead, or nickel. Further, the regulations define “materials containing HAP” to mean a material containing any of the target HAP in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the manufacturer or supplier. See 63.11607.

#### C. Reporting and Recordkeeping Requirements

We have revised § 63.11603, “What are my notification, reporting, and recordkeeping requirements?” of this final rule to revise the submittal dates for the Initial Notification of Applicability and Notification of Compliance Status reports. We have extended the initial notification of applicability from 120 days after publication of the final rule in the **Federal Register** to 180 days after publication of the final rule in the **Federal Register**.

#### D. Definitions

We have made several changes to the final rule definitions in § 63.11607, “What definitions apply to this subpart?”, and have added definitions for other terms used in this final rule. We added definitions for construction, dry particulate control device, responsible official, and wet particulate control device. We have revised the definition of paints and allied products, paints and allied products manufacturing, and paints and allied products manufacturing process.

#### E. Other

We corrected several typographical errors that appeared in various sections of the proposed rule.

### IV. Summary of Final Standards

#### A. Do these standards apply to my source?

This final rule (subpart CCCCCC) applies to new or existing paints and allied products manufacturing operations which are area sources of one of the target hazardous air pollutants (HAP) and that process, use, or generate materials containing one or more of the following target HAP: Benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel. “Material containing HAP” is defined in the regulations as any material that contains benzene, methylene chloride, or compounds of cadmium, chromium, lead, or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown by the manufacturer or supplier, such as in the Material Safety Data Sheet (MSDS) for the material.

In the proposed rule, we proposed that the affected source include the entire facility if the facility processes, uses, or generates any of the target HAP. Specifically, under the proposed rule, if the facility processes, uses, or generates any of the target HAP, then they would be required to control all HAP that is processed, used, or generated at the facility. In response to comments, we

have revised the final rule to define the affected source as only those processes that process, use, or generate the target HAP. In the proposed rule, we proposed that the affected source include the entire facility if the facility emitted any of the target HAP. Specifically, under the proposal, all paints and allied products manufacturing processes at the facility would be subject to the standards if any emissions source at the facility emitted one of the target HAP. In response to comments, we narrowed the scope of applicability of this final rule, and we made several changes to clarify the applicability provisions. The most significant change is that only those process units that emit one or more of the target HAP are subject to the rule. The final rule further specifies that each process vessel that emits one of the target HAP is subject only to requirements that apply to the same type of target HAP that triggered applicability, not requirements for all types of HAP. For example, a process vessel that uses only one or more target metal HAP (i.e., compounds of cadmium, chromium, lead, or nickel) is required to control all CAA section 112(b) metal HAP. Similarly, a process vessel that uses only target volatile HAP (i.e., benzene or methylene chloride) is required to control all CAA section 112(b) volatile HAP.

Paints and allied products manufacturing operations include the production of paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing industries that produce these materials are described by SIC codes 285 or 289 and NAICS codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include: (1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents; (2) the manufacture of electroplated and electroless metal films; (3) the manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and (4) activities by end users of paints or allied products to ready those materials for application. Quality assurance and quality control laboratories are not considered part of a paints and allied products manufacturing process, as they were not

part of the listed paints and allied products source category. Additionally, the standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA. Quality assurance and quality control laboratories and research and development facilities were inadvertently omitted from the proposal, but the final rule corrects this omission.

If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

#### *B. When must I comply with these standards?*

All existing area source facilities subject to this rule are required to comply with the rule requirements no later than December 3, 2012. New sources are required to comply with the rule requirements upon December 3, 2009 or upon startup of the facility, whichever is later.

#### *C. What processes does this final rule address?*

There are four general process operations common to the paints and allied products manufacturing source categories that emit one or more of the target HAP. These four process operations are: (1) Preassembly and premix, (2) pigment grinding, milling, and dispersing, (3) product finishing and blending, and (4) product filling and packaging.

For premix and assembly, the final rule addresses the target HAP emissions that are generated during the addition of pigments and other solid materials to the process or mixing vessels. The preassembly and premix step involves the collection of raw materials that will be used to produce the desired coating product. These materials are added to a high speed dispersion or mixing vessel. The types of raw materials that are used for solvent-based coatings include resins, organic solvents, plasticizers, dry pigment, and pigment extenders; water, ammonia, dispersant, pigment, and pigment extenders are used for water-based coatings.

The final rule addresses HAP emissions from pigment grinding, milling, and dispersing. Pigment grinding or milling entails the incorporation of the pigment into the paint or ink vehicle to yield fine particle dispersion. The three stages of this process include wetting, grinding, and dispersion, which may overlap in any grinding operation. The wetting agent,

normally a surfactant, wets the pigment particles by displacing air, moisture, and gases that are adsorbed on the surface of the pigment particles. Grinding is the mechanical breakup and separation of pigment clusters into isolated particles and may be facilitated by the use of grinding media such as pebbles, balls, or beads. Finally, dispersion is the movement of wetted particles into the body of the liquid vehicle to produce a particle suspension.

For product finishing and blending, the final rule addresses the HAP emissions that occur during heat-up losses during operation of the mixers; surface evaporation during mixing and blending; and the addition of pigments and other solid materials to the process or mixing vessels.

For product filling and packaging, the final rule addresses HAP emissions from the addition of small amounts of pigments, solids, or liquids to achieve the required color or consistency of the final product.

#### *D. What are the emissions control requirements?*

The following is a description of the control requirements for the paints and allied products manufacturing process described in section IV.C above. The control requirements only apply when an operation is being performed at a process vessel that uses materials containing HAP. As stated earlier, the regulations define "materials containing HAP" as a material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the manufacturer or supplier for the material, such as the Material Safety Data Sheet.<sup>4</sup> For example, an area source may have two process vessels, one containing tetrachloroethylene (which is not one of the target HAP) and the other containing methylene chloride, and, under this rule, only the process vessel containing methylene

<sup>4</sup> The CAA section 112(k) inventory was primarily based on the 1990 Toxics Release Inventory (TRI), and that is the case for the paints and allied products manufacturing area source category as well. The reporting requirements for the TRI do not include *de minimis* concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. See 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the scope of the listed source category is limited to facilities using materials containing one or more of the target HAP in quantities greater than 0.1 percent.

chloride (one of the target volatile HAP) would be part of the affected source and as such, subject to the process vessel standards.

#### 1. Standards for Metal HAP Emissions

This final rule requires owners or operators of all existing and new affected facilities to operate a particulate control device during the addition of pigments and other solids that contain compounds of cadmium, chromium, nickel, or lead, and during the grinding and milling of pigments and solids that contain compounds of cadmium, chromium, nickel, or lead.

Particulate control devices that vent to the atmosphere must be maintained such that visible emissions from the particulate control device shall not exceed 10 percent opacity when averaged over a six-minute period. Affected sources using particulate control devices that do not vent to the atmosphere are not subject to the requirements of this rule, as there are no emissions to the atmosphere.

#### 2. Standards for Volatile HAP Emissions

This final rule requires new and existing affected sources to equip process and storage vessels that store or process materials containing benzene or methylene chloride with covers or lids. The covers or lids can be of solid or flexible construction, provided they do not warp or move around during the manufacturing process. The covers or lids must maintain contact along at least 90 percent of the vessel rim and must be maintained in good condition. Mixing vessels that process or store materials containing one or more of the target volatile HAP must be equipped with covers that completely cover the vessel, except for safe clearance of the mixer shaft. All vessels that store or process materials containing benzene or methylene chloride must be kept covered at all times, except for quality control testing and product sampling, addition of materials, material removal, or when the vessel is empty.

The final rule requires that leaks and spills of materials containing benzene or methylene chloride must be minimized and cleaned up as soon as practicable, but no longer than 1 hour from the time of detection. Rags or other materials that use a solvent containing benzene or methylene chloride for cleaning must be kept in a closed container. The closed container may contain a device that allows pressure relief but does not allow liquid solvent to drain from the container.

#### *E. What are the initial compliance requirements?*

To demonstrate initial compliance with this final rule, owners or operators of affected new or existing sources must certify that they have implemented all required control technologies and management practices and that all equipment associated with the processes will be properly operated and maintained. In addition, a visual emission test using EPA Method 203C is required to be performed on the particulate control device on or before the compliance date.

#### *F. What are the continuous compliance requirements?*

This rule requires owners and operators of affected facilities to inspect the particulate control device annually to check the structural integrity of the particulate control device, and to perform a visual emission test using EPA Method 22 on the particulate control device every 3 months. If visible emissions are observed for two minutes of the required 5 minute Method 22 observation period, a Method 203C (40 CFR part 51, appendix M) test must be conducted within 15 days of the time when visible emissions were observed. If the Method 203C test indicates an opacity greater than 10 percent, you must take corrective action and retest using Method 203C within 15 days. The owner/operator will continue to take corrective action and retest each 15 days until a Method 203C test indicates an opacity equal to or less than 10 percent. Failure to meet the 10 percent opacity standard is a deviation and must be reported in your annual compliance report along with the corrective actions taken.

#### *G. What are the notification, recordkeeping, and reporting requirements?*

New and existing affected sources are required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A). Each new source is required to submit an Initial Notification no later than 180 days after initial startup of the operations or June 1, 2010, whichever is later. Existing affected sources must submit the Initial Notification no later than June 1, 2010. Notification of Compliance Status reports are required to be submitted according to the requirements in 40 CFR 63.9 in the General Provisions no later than June 3, 2013 for existing sources, or no later than 180 days after initial startup, or by June 1, 2010, whichever is later for new sources.

The affected source is required to prepare an annual compliance certification report. The annual compliance certification report contains the company name and address, a statement signed by a responsible official that certifies the truth, accuracy, and completeness of the certification report, and a statement of whether the source has complied with all of the relevant standards and other requirements of this rule. If there are any deviations from the requirements of this subpart, the facility must submit this annual compliance certification report with any deviation reports prepared during the year. The deviation reports must describe the circumstance of the deviation and the corrective action taken.

Facilities are also required to maintain all records that demonstrate initial and continuous compliance with this final rule, including records of all required notifications and reports, with supporting documentation; and records showing compliance with management practices. Owners and operators must also maintain records of the following, if applicable: Date and results of the particulate control device inspections; date and results of all visual determinations of visible emissions, including any follow-up tests and corrective actions taken; and date and results of all visual determinations of emissions opacity, and corrective actions taken.

### **V. Summary of Comments and Responses**

We received a total of 27 comments on the proposed NESHAP from industry representatives, trade associations, Federal and State agencies, and the general public during the public comment period. Sections V.A through V.F of this preamble provide responses to the significant public comments received on the proposed NESHAP.

#### *A. Applicability*

##### 1. General Applicability

*Comment:* Several commenters believe that the proposed rule subjects all retail and commercial paints and allied products operations that add and mix pigments to pre-manufactured products per customer specifications to the requirements in this rule. The commenters believe that this was not the intent of the rule, as demonstrated by the discussion of the affected number of sources, and economic impacts of the rule. The commenters suggest that EPA revise its definitions of “paints and allied products,” “paints and allied products manufacturing,” and “paints

and allied products manufacturing process” to exclude operations that only add and mix small amounts of pigment per container of pre-manufactured paint or allied products for commercial or retail purchase per customer specification.

One commenter suggests that EPA refer to the language used in the major source miscellaneous coatings manufacturing rule (40 CFR part 63, subpart HHHHH), which clarified its intent to regulate the coatings manufacturers, not activities by end users to prepare or modify coatings in preparation for application.

Another commenter requests that the definitions clarify that the rule does not apply to raw material production, as some larger area source facilities will be co-located with such operations.

**Response:** In response to comments, we re-examined the record supporting the initial listing of the Paints and Allied Products Manufacturing source category. Based on our review of the record supporting that listing, we agree with the commenters that the source category that was listed did not include retail and commercial paints and allied products operations which add and mix pigments to pre-manufactured products per customer specifications. EPA’s intent in the proposed rule was not to include the activities of end users, which include retail and commercial paints and allied products operations which add and mix pigments to pre-manufactured products per customer specifications, and we recognize that the definitions used in the proposal were confusing in this regard. In light of the scope of the listed source category and the confusion that resulted from some of the definitions in the proposed rule, we have revised the definitions of “paints and allied products,” “paints and allied products manufacturing,” and “paints and allied products manufacturing process” to exclude operations that add and mix pigments to pre-manufactured products and to clarify that only facilities that manufacture paints and allied products from raw materials, as described under NAICS 325510, 325520, 325910 and selected sectors under 325998, are covered by this rule. The revised definitions follow:

#### *Paints and Allied Products*

*Manufacturing* means the production of paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing processes that produce these materials are described by Standard Industry Classification (SIC)

codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include:

(1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents;

(2) The manufacture of electroplated and electroless metal films;

(3) The manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and

(4) Activities by end users of paints or allied products to ready those materials for application.

#### *Paints and Allied Products*

*Manufacturing Process* means all the equipment which collectively functions to produce paints and allied products from raw materials. A process may consist of one or more unit operations. For the purposes of this subpart, the manufacturing process includes any, all, or a combination of, weighing, blending, mixing, grinding, tinting, dilution, or other formulation. Cleaning operations, material storage and transfer, and piping are considered part of the manufacturing process. It does not cover activities by end users of paints or allied products to ready those materials for application. Quality assurance and quality control laboratories are not considered part of a paints and allied products manufacturing process.

In terms of the breadth of the rule’s applicability, some manufacturing facilities may have co-located or affiliated operations which meet the definition of paints and allied products manufacturing, and to which this rule does apply.

#### **2. Applicability Based on HAP Used/Emitted**

**Comment:** Commenters note that the proposed rule would apply to paint and allied products manufacturing area sources that process, use, or generate one or more of the six target HAP: benzene, methylene chloride, cadmium compounds, chromium compounds, lead compounds, and nickel compounds. Commenters also note that these HAP are referred to as the “target HAP” for this regulation. Commenters further state that, under the proposed rule, once a facility is determined to be subject to the rule, the emission limitations and management practices then would apply to all processes at all times, regardless of whether any target

HAP (or any HAP) was being processed, used, generated, or emitted. Commenters request that EPA limit applicability of the rule to those times when a process vessel is actually processing, using, generating, or emitting one or more of the target HAP.

One commenter supports EPA’s decision to apply the standard to all HAP. The commenter notes that EPA has the discretion under § 112(d) of the Clean Air Act to issue standards for area sources “to reduce emissions of hazardous air pollutants,” and EPA’s discretion is not limited to only regulating only the target HAP in the area source program.

Several commenters request that EPA limit the rulemaking’s applicability to those operations at a facility that are actually utilizing one of the target HAP. The commenters believe that EPA should revise the applicability language to make it clear that the rule only applies to processes with target HAP emissions at an affected source, as opposed to any operation at an affected source, regardless of whether or not the process involves one or more of the target HAP. One of the commenters notes that this approach is used in the Area Source Standards for Paint Stripping and Miscellaneous Surface Coating Operations and the Area Source Standards for Nine Metal Fabrication and Finishing Source Categories. Several of the commenters state that the intent of the area source regulations was to regulate the 30 Urban Air toxics, and EPA is significantly increasing the burden on industry, especially small businesses, by expanding the rule beyond the target HAP, without commensurate environmental benefit. One of the commenters requests that only the presence of one or more of the target metal HAP should trigger the requirements for other metal HAP, and that only the presence of benzene or methylene chloride should trigger the requirements for other volatile HAP emissions.

**Response:** Like the proposed rule, the final rule applies to any facility that performs paints and allied products manufacturing that is an area source of HAP emissions and processes, uses, or generates materials containing one or more of the target HAP: Benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel.

To develop the emissions standards in today’s rule, we identified the emission points that emit the target HAP and determined GACT for those emission sources. The proposed regulatory text required that these GACT requirements apply at all times, whether any of the target HAP was or was not being used.

However, the preamble to the proposed rule (74 FR 26147) stated that the requirements of the rule would apply when any operation is being performed that processes, uses, or generates any HAP. EPA intended to propose regulatory text that required that the rule's requirements apply when any operation is being performed that processes, uses, or generates any of the target HAP. The regulatory text in the final rule has been revised accordingly to state that the control requirements only apply when the facility is processing, using, or generating any of the target HAP.

The commenters requested that the GACT requirements only apply when the target HAP are being processed, used, or generated. They did not claim that EPA lacks the authority under § 112(d) of the Clean Air Act to regulate HAP other than the target HAP, but rather based their arguments on claims of potential burdens of expanding the rule beyond the target HAP. However, these commenters did not provide specific information regarding the potential additional burden to support these assertions. We believe there may be a minimal increase in the burden associated with controlling emissions in the instances when a non-target HAP is being used (without a target HAP also being present). Facilities that process, use, or generate one or more of the target HAP must have the required controls in place, and these same controls will control other metal and/or volatile HAP.

We did make changes in the final rule to clarify our original intent that the requirements apply only when a target HAP is processed, used, or generated. We also further refined this to specify that the requirement to keep process and storage vessels covered only applies when the vessel contains target volatile HAP.

*Comment:* Several commenters suggested that EPA include an applicability exemption for process tanks under a prescribed size. The commenters recommend an exemption for process tanks smaller than 250 gallons, both for consistency with the Miscellaneous Coatings Manufacturing Maximum Achievable Control Technology (MACT) rulemaking and to limit burden. One commenter stated that it is more difficult to install particulate controls on high dispersion process tanks that are less than 250 gallons and install covers on process tanks less than 250 gallons. In addition, if the 250 gallon threshold is not included, every "process tank" would need to be covered, including very small containers like 5 gallon containers and 55 gallon drums.

Another commenter noted that EPA has already determined in other Part 63 NESHAP regulations (such as the HON in subpart G container definition at § 63.111) and the RCRA Hazardous Waste Subpart CC regulations at 40 CFR 264/265.1080(b)(2) that containers of a capacity less than or equal to 0.1 cubic meters (m<sup>3</sup>) produce insignificant emissions and thus are exempted from the regulations. Additionally, the commenter stated that the HAP mandated to be regulated should be specifically listed in order to avoid any confusion.

*Response:* From the permit information we obtained for the rulemaking, we found that 8 out of 30 facilities are required to cover storage tanks or process vessels that contain VOC or organic solvents to prevent vaporization of VOCs. In a separate study, the Washington State Department of Ecology found that the 18 facilities that they visited or surveyed used lids or covers on all vessels.<sup>5</sup> The survey also stated that the use of covers or lids is considered to be a standard practice by the paint manufacturing industry. Industry representatives also provided estimates that around 90–95 percent of facilities use covers on their process and storage tanks to prevent product loss; these data do not provide any information on tank size.

None of the information that we found limited the use of lids or covers to the size of the tank. Therefore, we believe it is appropriate to require the use of lids or covers on all process and storage tanks that contain one or more of the target HAP, regardless of the size of the tank. The commenters did not provide any information to explain why covering a process tank of less than 250 gallons is burdensome. The commenters also provided no information to support adopting different requirements for smaller process tanks, nor do they provide any information explaining that process tank covers for the smaller tanks are not generally available control technology. The volatile HAP to be controlled are listed at § 63.11599(3).

### 3. Pollution Prevention Alternative Exemption

*Comment:* The commenters stated that a facility should be able to "opt out" of this rule in the future if the facility eliminates the processing, use, production or generation of the target HAP; otherwise, there is no incentive for coatings manufacturers or their raw

material suppliers to move away from these HAP. Additionally, several commenters stated that facilities that do reformulate or cease producing a certain product that subjected them to the rulemaking in the first place will be mandated to continue to operate costly and energy-consuming control equipment (e.g., particulate controls) for no environmental benefit. The facility's continued recordkeeping and reporting would be additional cost and burden.

One commenter believes that EPA's 1995 "once in/always in" policy applies to major sources subject to MACT standards and would not apply to this area source regulation. The commenter requested that EPA officially confirm that this policy does not apply to this final rulemaking and/or facilities that no longer use the target HAP after the date of implementation have the ability to opt-out of the rule.

*Response:* The comment concerning the "once in/always in" policy is not relevant to this rule. The regulated entities subject to this rule include the owner/operator of a facility that performs paints and allied products manufacturing is an area source of HAP emissions and processes, uses, or generates materials containing the following target HAP: Benzene, methylene chloride, and compounds of cadmium, chromium, lead, or nickel. If a facility that was covered under the rule discontinues processing, using, or generating the target HAP through pollution prevention practices or otherwise, then that facility is no longer covered by the rule. However, should the same facility reinstate processing, using or generating the target HAP, it would once again be subject to the requirements of this rule, including notification, recordkeeping, and reporting. Additionally, terminating use of the target HAP would require submittal of a report pursuant to § 63.9(j) and also require maintenance of the record as required by § 63.1(b)(3).

### B. Compliance/Implementation Dates

*Comment:* Two commenters state that § 63.11603(a)(1) requires existing sources to notify EPA within 60 days of publication of the final rule, and for new sources within 60 days of startup. The commenters state that the notification of Compliance Status found in § 63.11603(a)(2) requires that all sources report on their compliance status within 120 days of their respective compliance date. The commenters recommended that the deadlines be changed to 180 days in all cases, to provide time for small sources to comply and to be consistent with other similar Federal rules.

<sup>5</sup> Paint and Coatings Manufacturing Sector, Pollution Prevention Assessment and Guidance, Washington State Department of Ecology, Hazardous Waste and Toxics Reduction Program, Publication #98-410, Revised November 2002.



*Response:* We agree with the commenters that because most of the affected facilities are small businesses, and some might be complying with EPA regulations for the first time, they should be provided additional time to comply with the requirements. Per the General Provisions, we have pushed back the initial notification date to 120 days from the date of publication of the final rule. The compliance date is 180 days from the date of publication of the final rule.

### *C. De Minimis Thresholds and Subcategorization*

#### 1. De Minimis Thresholds

*Comment:* Several commenters suggest that EPA exempt small paints and allied products manufacturing facilities from the final regulation. The commenters propose using a de minimis level of 100 lbs/year of one or more of the target HAP. The commenters claim that sources with lower emissions levels were not included in the 1990 baseline emissions inventory. Another commenter suggests a mass-based de minimis level of 2.0 Megagrams (2.2 tons per year) for target HAP that are processed, used, produced, or generated. Alternatively, commenters suggested subcategorization of the source category into “small emission” and “large emission” facilities based on a 100 lb/year HAP actual emission threshold, and then exempting the small emission subcategory from all requirements.

The commenters claim that EPA has provided de minimis exemptions in previous area source rules, including Clay Ceramics, Glass Manufacturing, and the Benzene NESHAP for Waste Operations. One commenter states that precedence for a de minimis threshold (beyond the Occupational Safety and Health Administration (OSHA) de minimis threshold) is established in earlier NESHAP rulemakings, where EPA determined that the use of coatings containing urban air toxics below certain thresholds do not negatively impact human health and the environment. Specifically, the commenter notes that in the Clay Manufacturing Area Source Rule, EPA included an applicability de minimis based on the argument that emissions from facilities with annual production of less than 50 tons/year were not included in the 1990 baseline emissions inventory that was used in the basis for the area source category listing. The commenter states that only those above the 50 ton/year threshold were in the basis for listing, so only those facilities are covered by the rule. The commenter

believes the same is true for the paints and allied products manufacturing rule. Other commenters stated that state rules for paints and allied products manufacturing contain de minimis thresholds that exclude lower volume production facilities, waterborne production facilities, and small process tanks. The commenters state that since EPA can look to state regulations as part of the GACT analysis, EPA has the authority to adopt a 100 lb/year emission de minimis threshold. Several commenters believe that without a de minimis emission threshold, a facility that relies on a supplier MSDS may find itself out of compliance if, for example, a supplier reports a new trace metal constituent on the MSDS. The commenters note that the metals of concern are often contaminants in purchased raw materials. The commenters note that if the supplier's raw material source changes and the supplier's analysis begins to show higher traces of a metal, a manufacturer would be out of compliance upon receiving this new MSDS, even though no reportable emissions of the metal have occurred.

*Response:* EPA does not believe it is appropriate to establish a de minimis threshold exempting sources emitting less than 100 lb/year of the target HAP, or sources processing, using, or producing less than 2.0 Megagrams (2.2 tons per year) of the target HAP from the final regulations. Section 112(c)(3) requires that EPA list categories or subcategories of area sources sufficient to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP that present the greatest threat to public health in the largest number of urban areas are regulated. EPA listed the Paints and Allied Products Manufacturing area source category in 2002 as one of the categories needed to ensure that 90 percent of such area source emissions are regulated. The listed source category included sources emitting less than 100 lbs/year of the target HAP for the Paints and Allied Products Manufacturing source category. Therefore, were EPA to exempt those sources from regulation, the statutory requirement to regulate area sources representing 90 percent of area source emissions of the urban HAP would not be met. For this reason, EPA does not believe a de minimis exemption would be appropriate. The rules commenters cite where de minimis thresholds were established were issued under section 112(d)(2) for major sources (i.e., MACT standards), not for area sources under section 112(d)(5). Therefore, those major source

categories were not part of the list of source categories established to meet EPA's obligation under section 112(c)(3). Further, commenters' claims that EPA established de minimis exemptions in several area source rules are incorrect. In these rules, after examining the record on which the initial listing was based, EPA clarified the scope of the listed source category. Contrary to commenters' assertion, EPA did not create any exemptions in those rules. For example, in the case of Clay Ceramics, EPA stated:

“With this action, we are also clarifying that artisan potters, small ceramics studios, noncommercial entities, and schools and universities with ceramic arts programs, which typically have annual production rates of 45 Mg/yr (50 tpy) or less, are not a part of the source category listed pursuant to section 112(c)(3) and (k)(3)(B), and are, therefore, not covered by this area source standard. Urban HAP emissions from these facilities were not included in the 1990 baseline emissions inventory that was used as the basis for the area source category listing.”

EPA set standards in each of the area source rules cited above for all sources that were part of the listed source category to meet the statutory obligation in section 112(d)(3) to regulate sources representing 90 percent of area source emissions of the urban HAP. EPA also notes that the commenter's reference to state law requirements is irrelevant. EPA is required to establish area source standards pursuant to the requirements of section 112(d), and cannot create exemptions to those standards based on state law requirements.

Finally, commenters are concerned that without a de minimis emission threshold, a facility that relies on a MSDS may find itself out of compliance if a raw material source changes and the supplier's analysis begins to show higher traces of a metal, and those higher levels are not reflected on the MSDS. The CAA section 112(k) inventory was primarily based on the 1990 Toxics Release Inventory (TRI), and that is the case for the paints and allied products manufacturing area source category as well. The reporting requirements for the TRI do not require reporting of de minimis concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. See 40 CFR 372.38, Toxic Chemical Release Reporting; Community Right-To-Know (Reporting Requirements). Accordingly, the scope of the listed source category is limited



to facilities using materials containing one or more of the target HAP in quantities greater than 0.1 percent.

In addition, EPA believes the regulations as proposed adequately address the commenters' concern regarding reliance on the MSDS. For facilities that rely on a supplier MSDS, the manufacturer would only be out of compliance if the materials containing one or more of the target HAP greater than 0.1 percent are used in the process, without the required controls in place. Therefore, a manufacturer would be required to submit the appropriate forms if the manufacturer intends to use the material containing HAP greater than 0.1 percent by weight in the manufacturing process. Commenters provide no evidence to indicate that MSDS from suppliers will be inaccurate and will result in noncompliance with the regulation.

## 2. Subcategorization

*Comment:* One commenter states that the legal basis for EPA's subcategorization of the Paints and Allied Products Manufacturing area source category into large and small facilities is well established. The commenter asserts that section 112(d)(1) of the Clean Air Act provides that EPA "may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards." 42 U.S.C. 7412(d)(1). The commenter also notes that the Clean Air Act supports an EPA determination that work practice standards and general management practices constitute GACT for small Paints and Allied Products Manufacturing sources.

According to the commenter, a review of the commenter's internal data show significant differences between larger and smaller facilities based on production levels, matching EPA estimates that the metal HAP emissions for a typical "small emission" area source facility are only about 10 percent of the level of emissions for a typical "large emission" area source facility.

The commenter states that in the area source rule for Chemical Manufacturing, EPA evaluated impacts for two groupings or subcategories for metal HAP and considered a threshold because of an observed difference in operation depending on the emission rate. The commenter further notes that EPA realized that there was a difference between facilities with higher HAP emissions that manufactured products containing HAP as an intended part of the product, and a majority of facilities with low emissions where the HAP originated from impurities in raw materials. The commenter believes there

is a similar observed difference in operations depending on the emission rate for the paints and allied products manufacturing industry as well. The commenter states that facilities with actual emissions of paints and allied products manufacturing metal HAP (cadmium, chromium, nickel and lead) above 100 lb/yr produce products that contain the HAP as an intended part of the product. The commenter also asserts that EPA has the discretion to create subcategories of area sources, and that EPA should do so in the paints and allied products manufacturing rule based on cost considerations, as well as differing industry practices and processes.

The commenter claims that two of the management practices EPA proposed to identify as GACT are used frequently: (1) Sweeping/cleaning, and (2) purchasing only materials that are free (to the greatest extent possible) of HAP metals. Of the particulate matter (PM) control technologies EPA proposed as GACT, the commenter claims that large paints and allied products manufacturing facilities frequently use baghouses to reduce PM/HAP emissions, while smaller (less than 100 lb/year emission) facilities most often do not. The commenter also states that the consideration of costs and economic impacts is especially important for determining GACT for small paints and allied products manufacturing facilities because, given their extremely low level of HAP emissions, requiring additional controls would result in only marginal reductions in emissions at very high costs for modest incremental improvement in control.

*Response:* EPA does not believe that subcategories in the Paints and Allied Products Manufacturing area source category are warranted. In particular, EPA has no information demonstrating that paints and allied products manufacturing facilities that emit more than 100 lbs/year of HAP are of a different class, type, or size than similar facilities with lower emissions. In contrast, in the Chemical Manufacturing Area Source rule, EPA had information to support a conclusion that facilities above a certain total resource effectiveness value had different continuous process vents than facilities below that TRE value. See 73 FR 58352, 58364–65 (Oct. 6, 2008). We do not have any such information for the Paints and Allied Products Manufacturing source category. Absent such a demonstration, the Agency has no basis to support subcategorizing facilities with higher emissions from those with lower emissions. Further, while the commenters assert that larger facilities

use baghouses while smaller ones do not, the commenter provided no data or information to support this assertion, and EPA has no data or information to substantiate this claim.

## D. Emission Standards and Management Practices

### 1. Generally Available Control Technology

*Comment:* One commenter stated that, as described in § 112(k)(1), the purpose of the area source program is to "achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources \* \* \*." 42 U.S.C. 7412(k)(1). For area sources, EPA may set either MACT standards, or alternative standards (sometimes referred to as "GACT" standards) that "provide for the use of generally available control technologies or management practices \* \* \* to reduce emissions of hazardous air pollutants." 42 U.S.C. 7412(d)(5).

The commenter stated that EPA provides no explanation for its decision to issue GACT standards instead of MACT standards for the Paints and Allied Products Manufacturing area source category.

*Response:* As the commenter recognizes, in CAA section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, CAA section 112(d)(5), which is entitled "Alternative standard for area sources," provides:

With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may, in lieu of* the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

See CAA section 112(d)(5) (*Emphasis added*).

There are two critical aspects to CAA section 112(d)(5). First, CAA section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to CAA section 112(c). The commenter does not dispute that EPA listed the area source category noted above pursuant to CAA section 112(c)(3). Second, CAA section 112(d)(5) provides that, for area sources listed pursuant to CAA section 112(c), EPA "*may, in lieu of*" the authorities provided in CAA section 112(d)(2) and 112(f), elect to promulgate standards pursuant to CAA section 112(d)(5). CAA

Section 112(d)(2) provides that emission standards established under that provision “require the maximum degree of reduction in emissions” of HAP (also known as MACT). CAA section 112(d)(3), in turn, defines what constitutes the “maximum degree of reduction in emissions” for new and existing sources. See CAA section 112(d)(3).<sup>6</sup> Webster’s dictionary defines the phrase “in lieu of” to mean “in the place of” or “instead of.” See Webster’s II New Riverside University (1994). Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards under CAA section 112(d)(5) that provide for the use of GACT, *instead of* issuing MACT standards pursuant to CAA section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under CAA section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to CAA section 112(c), which is the case here.<sup>7</sup>

We disagree with the commenter’s assertion that we must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. Had Congress intended that EPA first conduct a MACT analysis for each area source category, Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA need not justify its exercise of discretion in choosing to issue a GACT standard for an area source listed pursuant to section

112(c)(3), EPA still must have a reasoned basis for the GACT determination for the particular area source category. The legislative history supporting section 112(d)(5) provides that GACT is to encompass:

“\* \* \* methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.”

The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category. Congress plainly recognized that area sources differ from major sources, which is why Congress allowed EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not allow that consideration in setting MACT floors for major sources pursuant to section 112(d)(3). This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states, i.e., provide EPA the authority to issue “alternative standards for area sources.”

Notwithstanding the commenter’s claim, EPA properly issued standards for the area source categories at issue here under section 112(d)(5), and in doing so provided a reasoned basis for its selection of GACT for these area source categories. As explained in the proposed rule, EPA evaluated the control technologies and management practices that reduce HAP emissions at paints and allied products manufacturing facilities, including those at both major and area sources. In its evaluation, EPA used information on pollution prevention from industry trade associations, and reviewed operating permits to identify the emission controls and management practices that are currently used to control volatile and particulate HAP emissions. We also considered technologies and practices at major and area sources in similar categories.

Finally, even though not required, EPA did provide a rationale for why it set a GACT standard in the proposed rule. In the proposal, we explained that the facilities in the source categories at issue here are already well controlled for the urban HAP for which the source category was listed pursuant to section 112(c)(3). Consideration of costs and economic impacts proves especially important for the well-controlled area sources at issue in this final action. Given the current, well-controlled emission levels, a MACT floor

determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for the area source category.

## 2. Metal HAP Standards

*Comment:* One commenter states that although particulate control devices are generally available, EPA has not adequately supported its proposal to set an opacity standard rather than a particulate matter standard. The commenter notes that EPA acknowledged that most of the State operating permits for facilities in this category impose a “concentration or mass emission particulate limit that requires testing using an appropriate particulate test method, in most cases EPA Method 5.” The commenter says that EPA rejected this widespread approach of a concentration or mass emission limit, instead adopting opacity as a surrogate for assessing mass emissions. The commenter states that EPA failed to demonstrate that the use of opacity as a surrogate is sufficient to achieve the levels of reduction that are already imposed by the State operating permits that rely on particulate testing. The commenter says that EPA’s reliance on a 1991 study of benefits of opacity monitors applied to Portland Cement Kilns was unpersuasive. The commenter also notes that in the recently proposed NESHAP for the Portland Cement Manufacturing Industry, EPA rejected the use of an opacity standard, stating that “we do not believe that opacity is an accurate indicator of compliance with the proposed PM emissions limit.”

Another commenter notes that there is no definition of capture or control efficiency in the proposed rule. The commenter recommends that EPA consider implementing capture and control system efficiencies parallel to those in the NESHAP for Nine Metal Fabrication and Finishing Sources (40 CFR part 63, subpart XXXXXX). In this rule, the commenter states that the term “adequate emissions capture methods” is defined in § 63.11522 to include “\* \* \* drawing greater than 85 percent of the airborne dust generated from the process into the control device.” The commenter continues by saying that the Metal Fabrication and Finishing NESHAP requires spray paint booths to be fitted with PM filter technology that is “\* \* \* demonstrated to achieve at least 98 percent capture. \* \* \*

*Response:* As the commenter pointed out, particulate control devices were determined to be GACT for the control of the particulate HAP emissions. Based on the existing operating permit

<sup>6</sup> Specifically, CAA section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for which the Administrator has emissions information. CAA Section 112(d)(2) directs EPA to consider whether more stringent emission reductions (so called beyond-the-floor limits) are technologically achievable considering, among other things, the cost of achieving the emission reduction.

<sup>7</sup> CAA Section 112(d)(5) also references CAA section 112(f). See CAA section 112(f)(5) (entitled “Area Sources” and providing that EPA is not required to conduct a review or promulgate standards under CAA section 112(f) for any area source category or subcategory listed pursuant to CAA section 112(c)(3), and for which an emission standard is issued pursuant to CAA section 112(d)(5)).

requirements for paints and allied products manufacturing, we found a variety of formats and units, e.g., percent opacity, allowable PM or PM<sub>10</sub> emission rates (pounds per hour or tons per year), and outlet concentrations (grains per dry standard cubic foot (gr/dscf)). We evaluated GACT for these format options and determined that an opacity limit was the most appropriate selection. As discussed below, there are cost and technical issues associated with demonstrating compliance with a PM numerical emission limit or a percent reduction standard, such that they do not constitute GACT for this source category.

As was stated in the proposal, we had concerns with the economic impact of particulate matter testing on the affected facilities, many being small businesses. A typical EPA Method 5 PM emissions test used for an emission limit or a percent reduction standard would cost between \$3,000 and \$10,000, while the cost of performing a Method 203C test is approximately \$2,000, assuming an off-site contractor conducts the test.<sup>8</sup> In addition, the manufacture of paints and allied products is a batch process. The addition of pigments and solids, when the particulate control device would need to operated, can be completed in minutes, whereas the typical Method 5 test is run for sixty minutes. This presents technical issues with stopping and starting the Method 5 test method in order to capture a representative sample of the particulate emissions from the particulate control device during the addition of pigments and solids. Based on these cost and technical issues, we determined that an opacity standard would minimize the economic burden on the facilities covered by this rule while still ensuring that the particulate control device is well-designed and operated.

EPA's statements in the May 6, 2009 proposed amendments for the Portland Cement NESHAP (74 FR 211360) are not relevant here. Our statements in that proposal were in relation to the use of an alternative opacity standard to demonstrate compliance with a numeric PM limit. In contrast, in the Paints and Allied Products Manufacturing area source NESHAP the opacity limit is not used to demonstrate compliance with a numeric PM limit. The opacity limit established in this rule is a standard and not a surrogate for particulate matter. The statements in the Portland Cement proposal did not question the use of an

opacity limit for the specific purpose for which EPA is adopting such a limit in today's action. Therefore, we believe our decision to establish GACT as the requirement to capture and route PM emissions to a control device that achieves a specified opacity is warranted. This format is retained in the final rule.

In summary, we believe the requirement to capture and route PM emissions to a control device that achieves a specified opacity limit is GACT. This technology is generally available, and opacity is a reasonable and effective means of ensuring that the control device is functioning correctly and achieving emission reductions.

*Comment:* EPA proposed that new and affected sources must capture particulate emissions and route them to a particulate control device during the addition of pigments and other solids and during the grinding and milling of solids. Two commenters agree with EPA that, after the addition processes, the pigments and associated metal HAP are in solution and emissions are minimal. Two commenters question whether particulate controls are needed during the grinding and milling stage, which occurs after the addition process when the pigments are in solution. One of the commenters notes that often grinding and milling equipment is fully enclosed, and there are typically no HAP emissions from the process. Two commenters suggest that particulate controls only be required when pigments and solids are added to the high speed dispersion tanks.

*Response:* There are a number of different milling and grinding methods and equipment that are used in the paints and allied products manufacturing industry. As the commenters note, many grinding and milling processes are fully enclosed and typically do not emit HAP from this process. In addition, there are minimal HAP emissions from the grinding and milling processes that occur when the pigments are in solution. Therefore, the final rule has been revised to provide three additional compliance options other than the use of a particulate control device. A particulate control device must be used during the addition of dry pigments or other dry materials that contain HAP to the grinding and milling equipment. However, the use of pigments or materials that contain HAP in paste, slurry, or liquid form instead of in dry form is an alternative means of compliance for this area source rule. In addition, fully enclosing the grinding and milling equipment is a second alternative means of compliance, in lieu of using a particulate control device. In

addition, the requirements of the rule are satisfied if the pigments and solids that contain HAP in the grinding and milling equipment are in solution. These revisions do not change the intent of the rule, which is to reduce HAP emissions; in the case of each of these revisions, minimal HAP are emitted. In other words, we are not requiring use of a particulate control device during periods when alternative compliance methods will ensure that particulate emissions will be controlled. Each of these compliance alternatives will achieve at least as much reduction of emissions of the target HAP as will use of a particulate control device. Therefore, we believe that these revisions address the commenters' concerns because use of a particulate control device is not required if a facility does not have any metal HAP emissions, whether it is because the metal HAP is in paste, liquid, or slurry form during grinding and milling or because a facility is not venting emissions to the atmosphere.

We agree with the commenter that particulate controls should be used during the addition of solid materials that contain HAP to high speed dispersion.

*Comment:* Several commenters object to the 5 percent opacity limit. One of the commenters states that most paint facilities with particulate controls do not have opacity limits, and for those facilities that do, the existing limits are not as stringent as the proposed 5 percent opacity limit. Based on the operating permit information in the docket, the commenter believes that EPA's proposal of 5 percent is arbitrary and indicated that based on real-world experiences; they stated that 30 percent opacity is more realistic. Two of the commenters note that only three of the 44 facilities evaluated for this rulemaking had a 5 percent opacity requirement. The commenters indicate that the remaining facilities have opacity requirements of 20 percent or greater. Given these facts, the two commenters believe that an opacity standard of 20 percent would be more in line with what is intended by GACT. One commenter reviewed the 44 operating permits in the docket for this rulemaking and found that only 3 had a 5 percent opacity limit; 11 had a 20 percent limit, 2 had 30 percent limit, 13 had 40 percent limit, and 2 had an observed or no opacity limit. The commenter states that since this rule is governed by GACT, EPA is obligated to determine the control and work practices that are most commonly used or that are most prevalent. The commenter maintains that EPA has not

<sup>8</sup> Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities, September 15, 2008.

appropriately set the standard, and that GACT would be an opacity level of 30 percent. In addition, the commenter states that as most of the affected sources under this rulemaking are small businesses, EPA should not maintain an opacity emissions limit requirement in the final rulemaking. However, the commenter says that if EPA does decide to codify an opacity emissions level, it be no less than 30 percent.

*Response:* The commenter's statement that GACT must be based on the control technologies or emission limitations of the majority is incorrect. Rather, GACT reflects what is generally available, and a control technology may be generally available even if a majority of sources are not currently using it. However, in the case of paints and allied products manufacturing, we found that the use of particulate control devices is a common practice; the permits we obtained indicated that 79 percent of the facilities were currently equipped with a particulate control device.

We disagree with the commenter's interpretation of the opacity limitations in the permit data. The majority of opacity limitations in the permits are general opacity limits that are intended to limit the amount of fugitive emissions that are emitted to the atmosphere from an industrial facility. These fugitive emissions include road dust, storage pile and other non-process emissions from an industrial facility. We believe that many of these opacity limits in the permits are not intended to limit the emissions from a particulate control device. To determine an appropriate opacity limit for this rule, we reviewed documents related to opacity and particulate control devices. Based on this review, we concluded that the opacity from a properly operated particulate control device would be zero or near zero. Therefore, we proposed a 5 percent opacity standard for the particulate control device.

We selected an opacity standard because opacity provides an indication of the concentration of particulates leaving an exhaust stack. The more particulate matter that is passed through the exhaust, the more light will be blocked, and, as a result, a higher opacity percentage is observed. The documents that we reviewed determined that in many cases a properly maintained particulate control device could achieve zero or near zero opacity. However, many of these measurements were determined using a continuous opacity monitor system (COMS). For this rule, we believe all of the facilities will measure opacity using a trained observer, who assigns opacity readings in 5 percent increments. The

trained observer is certified to determine the opacity with a positive error of less than 7.5 percent opacity, and to observe 95 percent of the readings with a positive error of less than 5 percent opacity. To take into account this observer error, we have revised the final opacity limit to be less than 10 percent opacity when averaged over a six minute period.

### 3. Volatile HAP Standards

*Comment:* Three commenters state that operators need to open nearly every process or storage tank at some time for quality control testing, adding of materials or removal of product. Therefore, consistent with the Miscellaneous Coatings Manufacturing MACT (MCM), one commenter requests that EPA revise the regulation such that operators are allowed to open any vessel, be it mixing, process, or storage, for quality control testing and sampling of the product, addition of materials, or removal of product from the vessel. One commenter notes that the proposed rule requires that process and storage vessels must be kept covered when not in use. The commenter notes that EPA provided an exception during the manufacturing process to allow for quality control or during the addition of pigments. The commenter recommends that a similar exception be provided to gain access to process and storage vessels for emptying, cleaning, and maintenance. One commenter states that some of their vessels are cleaned manually, and therefore covers cannot be maintained over the vessel at all times. The commenters subsequently believe that an exemption needs to be added to the final rule for inspection and/or cleaning of the process vessels.

*Response:* In the proposed rule, we recognized certain situations during which process and storage vessels need to be opened. In establishing the GACT for this area source, we did not include other necessary actions. As such, we have amended the final rule so that operators may open any vessel necessary for quality control testing and product sampling, addition of materials, or product removal. We did not include maintenance, because we believe that maintenance of the process vessel should be performed when the process vessel is empty. We have also revised the regulations to only require lids or covers on process or storage vessels that contain benzene or methylene chloride. Process or storage vessels that do not contain benzene or methylene chloride, and process or storage vessels that are empty, are not required to have covers or lids.

*Comment:* Numerous commenters believe the proposed vessel cover requirements are nearly impossible to institute both from a compliance and enforcement standpoint. Many of the commenters believe that it is nearly impossible to confirm that a lid or cover touches at least 90 percent of the vessel rim at any given time. Further, states a commenter, if a cover is constructed from a flexible material, it will most likely move around during the manufacturing process. The commenter continues that solid lids may "move around," and/or warp over time. The commenter notes that only one of the State permits in the docket had this requirement and that this should not be considered GACT. Another commenter believes that the plywood covers/lids that EPA used to estimate costs for this rule would probably not meet this standard, as plywood may warp over time. Therefore, the commenters suggest that this requirement be deleted.

*Response:* The 90 percent cover requirement is intended to ensure that the lid or cover properly fits on the process vessel that contains the target HAP. The 90 percent cover requirement can be calculated by subtracting the length of any visible gaps from the circumference of the process vessel, and dividing this number by the circumference of the process vessel. We believe this requirement also addresses the issue of warping of the cover over time, because if the cover warps or moves around so that the vessel is not meeting the 90 percent coverage requirement, then the cover should be replaced in order to effectively control the HAP emissions. We understand that the cover may move around during the manufacturing process; however we believe the 90 percent cover requirement provides the best guidance for covering a process vessel that contains HAP. It ensures that HAP emissions are controlled, but provides some flexibility (i.e., as much as ten percent of the circumference of the lid need not be in contact with the cover) to accommodate movement of the covers that may occur during the manufacturing process.

Further, the 90 percent cover requirement is consistent with the standard procedures EPA has observed at existing paints and allied product manufacturing facilities. Some facilities are subject to similar 90 percent cover requirements under state or local regulations (for example, San Diego County). Based on our data, nearly all paints and allied product manufacturing facilities use lids on process vessels to prevent loss of product; this makes good business sense. Lid options include

tight-fitting stainless steel lids, elasticized plastic "shower caps," and plywood covers. The 90 percent cover requirement is designed to remove any uncertainty about whether a vessel is adequately covered, for both the facility manager and the enforcement personnel. Therefore, the 90 percent cover requirement is included in the final rule.

#### *E. Testing, Monitoring, and Inspection Requirements*

##### 1. Visual Emissions Requirement

*Comment:* Several commenters state that EPA Method 9 is burdensome. One commenter suggests that EPA allow for an alternative or modification to Method 9 that has been widely implemented across the country. Two commenters state that the area source NESHAP requirements for the Nine Metal Fabrication and Finishing Sources allow facilities to utilize EPA Method 22 in lieu of EPA Method 9 if no visible emissions are observed. One commenter believes that it is highly unlikely there would be visible emissions from a facility that uses a particulate control device, and requiring EPA Method 22 for periodic monitoring should be more than adequate for this source category. One commenter states that other methods use observation and reporting techniques very similar to Method 9, except that an uncertified observer would be permitted to make an initial determination of any visible emission. The commenter continues, stating that if a visible emission is identified, then corrective measures must be taken. The commenter notes that if more than a trace of visible emissions persists after maintenance has been completed, the facility must either determine whether the emission limit is being exceeded using a certified observer, or shut down the process. The commenter says that this approach is currently being used by their facility and suggests that EPA include this method in the final rulemaking. One commenter believes that a simple evaluation of visible emissions coupled with the pressure drop monitoring is adequate to monitor the ongoing proper operation of the add-on dry PM control device. Another commenter suggests that EPA provide an alternative to the formal Method 9 observation by allowing the owner/operator to conduct a general visible emission observation once per calendar quarter. The commenter says that if the owner/operator does observe any visible emissions during the quarterly observations, then the owner/operator should be allowed to address the situation causing the visible emissions.

The commenter requests that if the problem persists for more than 24 hours, then the owner/operator should treat the observation as a deviation, or they can have the option to conduct a formal opacity test using a trained Method 9 observer.

*Response:* We appreciate the basic concerns of the commenters with regard to Method 9, although we have not elected to incorporate the specific suggestions made. In the final rule, we have changed the requirement, which now reads that an initial Method 203C test must be conducted to demonstrate compliance with a 10 percent opacity limit. Upon re-evaluation of the data and actual facility conditions, we determined that Method 203C better characterizes the emissions from the paints and allied product manufacturing operations. The time in which the emissions are present are significantly shorter than the thirty-minute visual inspection of Method 9. Method 203C is similar to Method 9 in training; however, Method 203C specifically allows for these short time limits with a one-minute average.

We have also removed the requirement to conduct additional Method 9 tests every six months. In place of these semi-annual Method 9 tests, the final rule requires that a Method 22 visible emissions observation be conducted once per quarter. If this observation detects visible emissions for six minutes of the required 15 minute observation period, then a Method 203C test is required within one week. If the Method 203C test then detects an opacity greater than 10 percent, the corrective action and retesting within 15 days requirement that was in the proposed rule would apply. This information must also be included in the annual report. We believe that Method 22 provides a comparable approach to ensure that any emission control equipment is operating properly and HAP emissions are reduced. Method 22 is used to ensure the process and any emission control equipment is operating properly and is not generating excess emissions. Method 22 is comparable to Method 203C because both methods use the human eye to determine if visible emissions are observed from an industrial activity. Therefore, we believe that this approach reduces the burden of the semi-annual Method 9 testing that the commenters were concerned about, while also ensuring that the control devices are operating properly.

*Comment:* Three commenters have suggestions related to the proposed inspection requirements. One of the commenters agrees that wet and dry PM

control systems require initial and ongoing system integrity inspections as well as integrity inspections after each incidence of maintenance or repair. The commenter believes that these inspections are necessary to assure the successful ongoing capture and control of the PM emissions from paint manufacturing. However, the commenter states that the exact frequency, extent, and nature of these inspections should be defined by the coatings manufacturer in a written plan with which they should comply; the elements of the plan should be clearly established in the rule. The commenter recommends that the hood and flexible ductwork portion of the system be subject to informal inspections each week of use while the rigid portion of the ductwork be subject to annual inspections, or to inspection after any maintenance or repair work is performed on the duct system. The commenter recommends that initial corrective action should be immediately undertaken to mitigate any problems when system integrity is compromised and the identified problem fully corrected and documented within 15 days of first discovery. Two commenters believe that a weekly inspection of the particulate control device is not practical. A commenter states that because ductwork leaks under a vacuum cannot be visually detected, weekly visual leak inspections of dry particulate control device ductwork should not be required. In addition, the commenter notes that EPA has historically exempted the inspection of ductwork as excessive. The commenter states that several MACT rules require only annual inspection of ductwork. One commenter believes that the requirement should be replaced with a standard condition for proper operation and maintenance in accordance with the manufacturer's recommendations.

For dry PM control devices, one commenter recommends that the pressure drop across the system be monitored continuously using some type of manometer or pressure drop gauge to verify that the pressure drop is maintained within the range recommended by the manufacturer of the control device, which includes considerations based on the filter media employed, the method of filter media cleaning employed (if any), and the loading of the effluent stream being controlled. The commenter believes that wet PM control systems should be inspected on a frequency recommended by the control system manufacturer, and the frequency as well as the parameters to be monitored should be clearly

defined in a written management plan developed and implemented by the coatings manufacturer employing the system. The commenter says that this graduated type of approach to inspection frequency and the management plan requirement to define the details of the inspection parameters as proposed in the preceding paragraphs has been used in the area source NESHAP for Nine Metal Fabrication and Finishing Sources. The commenter states that this approach would provide a viable means to both assure ongoing compliance while minimizing the burden of compliance on the source.

*Response:* We believe that it is important that regular inspections be conducted to ensure that the integrity of both the capture system and the control device is maintained, and we agree with the commenters in regard to the inspections of the rigid ductwork. Therefore, we have clarified in the final rule that the rigid, stationary portions of the ductwork only need to be inspected annually. Because the particulate control system operates infrequently, we believe annual inspections of the rigid, stationary ductwork is sufficient to ensure the integrity of the particulate control system. However, we do believe that inspection of flexible ductwork needs to be conducted more frequently. Therefore, we retained the weekly inspection requirement for hoods and flexible ductwork in the final rule. We do not agree with the one commenter who states that the best approach is to establish the inspection frequency in site-specific plans. Site-specific plans create additional reporting burdens for small businesses. In addition, site-specific plans may not provide the periodic inspections that are needed to ensure that the particulate control device is operating properly. Therefore, we believe that the revised inspections will provide the insurance that the particulate control device is operating properly, while reducing the burden on the facility.

We agree that continuous monitoring of pressure drop can be used to ensure that the control system is operating properly; however, we also believe that the combination of the system integrity inspections and the visual emissions monitoring (discussed below) are sufficient for the source category and at a lower cost than installing, calibrating, and operating a continuous monitoring system (CMS). Inspections and visible emissions monitoring of the particulate control device system provide data indicative of a well-operated and maintained control device. The inspections will ensure there are no leaks in the duct work, while the visible

emissions monitoring will ensure that the particulate control device is operating as intended, and that no excess emissions are emitted. Many of the paints and allied products manufacturing facilities are small businesses, and incorporating a continuous monitoring system would create an economic hardship on many of these businesses. Therefore, we have not incorporated the commenter's suggestion to require continuous monitoring of pressure drop. We also reviewed the graduated type of inspections and monitoring outlined in the NESHAP for Nine Metal Fabrication and Finishing Sources and believe that this type of inspection and monitoring program is not appropriate for the paints and allied products industry. Many of the nine metal fabrication and finishing facilities require continuous operation of the particulate control device. In contrast, the majority of paint and allied products are produced in batches and the operation of the particulate control device is expected to be intermittent. Therefore, we believe that the proposed inspection and monitoring requirements for the paints and allied products manufacturing industry are appropriate.

While the proposed rule included inspection requirements, it did not contain any provisions regarding required actions if problems were found during an inspection. We agree that such a requirement is needed to ensure that corrective action will be taken promptly. Therefore, we have incorporated the commenter's suggestion to require that corrective action be initiated as soon as practicable to mitigate any problems when system integrity is compromised and that the identified problem be fully corrected and documented within 15 days of first discovery.

#### *F. Reporting and Recordkeeping Requirements*

##### 1. Compliance Certification

*Comment:* The commenters note that there seems to be conflict between Section 63.11603(b), which requires the development and retention of compliance certifications and the development, retention, and submission of deviation reports when deviations from the requirements of the rule exist or have existed. Section III.E of the preamble requires that a responsible official sign off that all the requirements were met in the preceding month within 15 days of the end of each month. Two commenters recommend that the required records suffice in demonstrating compliance. Another commenter believes that the submission

of a deviation report and annual certification when deviations have occurred during a calendar year will assist regulated entities in maintaining compliance and will assist the regulatory agencies in compliance oversight.

*Response:* We do not believe that a conflict exists between the compliance certification requirements and the deviation reports. The compliance certifications of section 63.11603(b) are the baseline requirement to demonstrate ongoing compliance with the standard. However, if a deviation occurs during the previous twelve month period, the facility must prepare and submit a deviation report, which details the specific area(s) of noncompliance with the standard and efforts undertaken to return the source to compliance. These are two separate requirements, and the latter applies in the event of a deviation. Submission of the deviation report is necessary so that the regulatory agency remains apprised of the ongoing compliance status of the facility and can focus their compliance assistance and enforcement response efforts.

However, we believe that section § 63.11603(b)(2)(ii), which requires that a statement in accordance with § 63.9(h) of the General Provisions to be signed by a responsible official, is sufficient to ensure compliance with the regulations, and that no additional requirement that a responsible official must certify that all requirements were met in a particular month by the 15th day of the following month is necessary. Therefore, the final rule does not include the latter certification requirement.

These revisions mean that a responsible official must annually certify that all requirements have been met. We believe that the annual certification by the responsible official is sufficient to ensure that the facility has complied with all of the requirements throughout the year, and that the additional burden of monthly certification is not warranted. In addition, we agree with the commenter that the submission of an Annual Compliance Certification and Deviation Report from facilities where deviations have occurred during the calendar year will assist regulated entities in maintaining compliance and will assist the regulatory agencies in compliance oversight.

*Comment:* The commenter notes that some facilities have older particulate control devices, which while still effective, may not have manufacturer information available. The commenter states that sources should not be prohibited from using these control

devices if they meet the emission standards of this subpart, even though they no longer have the original paperwork for the device. The commenter recommends that if the original records are not available, the source should follow best operating practices for the devices.

*Response:* We recognize that some facilities may not have, and may not be able to obtain, the manufacturer's instructions, despite their best efforts. Therefore, we agree with the commenter and will remove the reference to the manufacturer's instructions in § 63.11602(a)(2)(iii) and also remove § 63.11603(c)(3).

### G. Baseline Emissions and Emission Reductions

#### 1. Emissions Factors

*Comment:* Two commenters say that EPA used old AP-42 emission factors which they believe doubles the calculated emissions in comparison to the actual emissions. For example, one of the commenters states that EPA used an outdated AP-42 emission factor of 1.5 lbs VOC/100 lbs of product that was developed based on solvent based coatings from the 1950s. The commenter states that these coatings are not representative of today's high solids and waterborne coatings. The commenters point out that Chapter 8 of EPA's Emission Inventory Improvement Program (EIIP) states that the use of source-specific emission models/equations is the preferred technique for estimating emissions from coatings manufacturing mixing operations since emission factors (AP-42) are not as accurate as specific emission models or equations. They said that since EPA is unclear whether the facilities tested in preparing this factor actually represent a random sample of the industry, the AP-42 factor for paint and varnish manufacturing is assigned an emission factor rating of C. One commenter asks that EPA revise its estimates using accurate models and data.

*Response:* The EIIP provides four methods for estimating emissions from paint, ink, and other coating manufacturing operations: Emission factors; source-specific models; mass-balance calculations; and test data. In order of preference, the commenter is correct that source-specific emissions models are preferred to using emission factors. However, when the data necessary to run the emissions models are not available, the use of emission factors is a reasonable way to estimate emissions. The commenters imply that all emission levels for this rulemaking were estimated using AP-42 emission

factors. This is not the case. In fact, for purposes of assessing impacts, including cost-effectiveness, as presented in the background memoranda (EPA-HQ-OAR-2008-0053-0070), the HAP emissions from the Paints and Allied Products Manufacturing category were calculated using the 2002 National Emissions Inventory (NEI) data. The NEI is a national emissions inventory that is built from the "ground up." That is, emission estimates generated by individual plants and companies are submitted to state and local agencies, who then submit the data to EPA for inclusion in the NEI. While the basis for all the emission estimates in the NEI is not provided, the facilities that submit emissions data to their state and local agencies generally use test data, emission models, and mass-balance calculations to create their estimates, where such information is available. The baseline HAP emissions from the 2002 NEI were 4,761 tons per year.

Emission factor data from AP-42 were used to estimate VOC and PM emissions from model plants to estimate the capital and annual costs of control equipment for each of the model plants. The fraction of the AP-42 VOC and PM emissions that are HAP were calculated using the HAP/VOC mass fraction obtained from the facilities that reported both HAP and VOC emissions in the 2002 NEI database. Using the assumptions from the Regulatory Alternative Impacts memorandum (EPA-HQ-OAR-2008-0053-0073) regarding the number of facilities that are currently controlled, the emission factors from AP-42, and the HAP/VOC mass fractions from the 2002 NEI, the HAP emissions were estimated to be 4,591 tons per year. A comparison between the HAP emissions in the industry-reported NEI (4,761 tons/yr) and those estimated from AP-42 factors and HAP speciation profiles (4,591) supports EPA's use of the AP-42 factors for estimating emissions from the model plants, because the AP-42 factors result in a similar estimate of emissions as the NEI database.

*Comment:* One commenter states that most of the methylene chloride emissions documented by EPA are from facilities that package paint stripper/paint remover products, which are specifically excluded from this rulemaking. Therefore, according to the commenter, EPA should discount any emissions that result from the packaging of methylene-based paint strippers and paint removers. In addition, the commenter indicates that one company that produces nickel-based coatings accounted for most nickel emissions

from the industry. Again, they claim that EPA should discount the nickel emissions from this one company. Finally, the commenter says that it appears that EPA inadvertently included several pigment manufacturing operations in the NEI database, resulting in increased metal emissions for the industry. The commenter believes that EPA should remove the emissions associated with paint stripper/paint remover packaging; the company that produces unique nickel based coatings; and the emissions from pigment manufacturing operations from the emissions of the coatings manufacturing industry, since these overstated emissions have an impact on EPA's cost effectiveness calculations.

*Response:* For purposes of assessing the impacts of today's rule, we used the 2002 NEI data. The source classification codes (SCC) in the 2002 NEI database show that the main sources of methylene chloride emissions are from general mixing and handling, cleaning, and degreasing. None of these SCCs indicate that methylene chloride emissions occur during packaging of paint stripper or paint remover products. Therefore, we have no reason to believe that the estimated methylene chloride emissions used in the baseline emissions (EPA-HQ-OAR-2008-0053-0070) are incorrect.

We reviewed the SCCs and process descriptions in the 2002 NEI database and did not find any pigment manufacturing facilities. Therefore, no adjustments to the 2002 NEI data are needed.

We reviewed the 2002 NEI emissions data used to develop the baseline emissions for the paints and allied products source category and found that 60 of the 63 of emission data points used to estimate nickel emissions were from combustion sources and should not have been included in the baseline emissions. By removing these emission points, the total nickel emissions would be reduced by 0.028 tons per year, and the total estimated nickel emissions from the paints and allied products industry would be reduced by 0.070 tons per year. This decrease in nickel emissions would not significantly affect the total HAP emissions, which was estimated to be 4,761 tons per year, or the total listed HAP emissions which was estimated to be 221.3 tons per year. Therefore, we believe that revising the estimated baseline HAP emissions would have little or no impact on the cost effectiveness calculations.

We recognize that the paints and allied products manufacturing industry has reduced its urban HAP emissions over the past decades. The regulations



being finalized today will ensure that future emissions from paints and allied products manufacturing operations will be limited to the same level that is being generally achieved today and was determined to be GACT. Without such regulations, there is nothing that would limit future target HAP emissions from a new paint or allied product manufacturing product.

#### *H. Title V Requirements*

*Comment:* The commenter supports EPA's proposed rule in the exemption of the Paints and Allied Products Manufacturing area source category from Title V permitting requirements. The commenter believes that the proposed recordkeeping and reporting requirements are sufficient to determine compliance with the rule, and EPA should balance these requirements against the level of resources typically present at such smaller sites and the expected amount of emission reductions associated with these requirements.

Another commenter states that to demonstrate that compliance with title V would be "unnecessarily burdensome," EPA must show, *inter alia*, that the "burden" of compliance is unnecessary. According to the commenter, by promulgating title V, Congress plainly indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter says that these requirements provide many benefits that Congress clearly viewed as necessary. Thus, continues the commenter, EPA must show why for any given category, special circumstances make compliance unnecessary. The commenter maintains that EPA has not made that showing for any of the categories it proposes to exempt.

*Response:* EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if she determines that compliance with title V requirements is "impracticable, infeasible, or unnecessarily burdensome" on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term "unnecessarily burdensome" in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 ("Exemption Rule"). In

addition to interpreting the term "unnecessarily burdensome" and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are sufficient implementation and enforcement programs in place to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).<sup>9</sup>

In discussing the above factors in the Exemption Rule, we explained that we considered on "a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act." See 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

<sup>9</sup> In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 72 FR 15254–15255, March 25, 2005. As shown above, after conducting the four-factor balancing test and determining that title V requirements would be unnecessarily burdensome on the area source categories at issue here, we examined whether the exemption from title V would adversely affect public health, welfare and the environment, and found that it would not.

The commenter asserts that "EPA must show \* \* \* that the 'burden' of compliance is unnecessary." This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term "unnecessarily burdensome" in CAA section 502, but rather a new test that the commenter maintains EPA "must" meet in determining what is "unnecessarily burdensome" under CAA section 502. EPA did not re-open its interpretation of the term "unnecessarily burdensome" in CAA section 502 in the June 1, 2009 proposed rule for the category at issue in this rule. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the source category. Had we sought to re-open our interpretation of the term "unnecessarily burdensome" in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the June 1, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes "unnecessarily burdensome" under CAA section 502, as that issue falls outside the purview of this rulemaking.<sup>10</sup>

Furthermore, we believe that the commenter's position that "EPA must show \* \* \* that the 'burden' of compliance is unnecessary" is unreasonable and contrary to Congressional intent concerning the applicability of title V to area sources. Congress intended to treat area sources differently under title V, as it expressly authorized the EPA Administrator to exempt such sources from the requirements of title V at her discretion. There are several instances throughout the CAA where Congress chose to treat major sources differently than non-major sources, as it did in CAA section 502. Moreover, although the commenter espouses a new interpretation of the term "unnecessarily burdensome" in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are "unnecessarily burdensome" for an area source category, the commenter does not explain why EPA's interpretation of the term "unnecessarily burdensome" is arbitrary, capricious or otherwise not in accordance with law. We maintain that

<sup>10</sup> If the commenter objected to our interpretation of the term "unnecessarily burdensome" in the Exemption Rule, (s)he should have commented on and challenged that rule. However, any challenge to the Exemption Rule is now time-barred by CAA section 307(b). Although we received comments on the title V Exemption Rule during the rulemaking process, no one sought judicial review of that rule.

our interpretation of the term “unnecessarily burdensome” in section 502, as set forth in the Exemption Rule, is reasonable.

*Comment:* One commenter states that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information for the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary title V permits. The commenter also says that EPA does not claim, far less demonstrate with substantial evidence, that citizens have the same ability to obtain emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level. The commenter states that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens’ access to information and ability to enforce CAA requirements as highly important, both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations, and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter states that, likewise, it is difficult or impossible for citizens to bring enforcement actions. The commenter continues that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt without title V permits. The commenter also says that EPA does not claim, far less demonstrate with substantial evidence, that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claims that, to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the

commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt. The commenter concludes that EPA does not even acknowledge these benefits to title V, far less explain why they are unnecessary, and that for this reason alone, EPA’s proposed exemptions are unlawful and arbitrary.

*Response:* Once again, the commenter attempts to create a new test for determining whether the requirements of title V are “unnecessarily burdensome” on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with substantial evidence that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter’s position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term “unnecessarily burdensome” in CAA section 502. For all of the reasons explained above, the commenter’s attempt to create a new test for EPA to meet in determining whether title V is “unnecessarily burdensome” on an area source category cannot be sustained. This rulemaking did not re-open EPA’s interpretation of the term “unnecessarily burdensome” in CAA section 502. In any event, EPA’s interpretation is reasonable. Furthermore, the commenter’s statements do not demonstrate a flaw in EPA’s application of the four-factor balancing test to the specific facts of the sources we are exempting, nor do the comments provide a basis for the Agency to reconsider the exemption as we are finalizing it.

EPA reasonably applied the four factors to the facts of the source category at issue in this rule, and the commenter has not identified any flaw in EPA’s application of the four-factor test to the area source category at issue here. Moreover, as explained in the proposal, we considered implementation and enforcement issues in the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA’s unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. See 70 FR 75326.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that state-delegated programs are sufficient to

assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. 74 FR 26152. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources, and that these additional programs will supplement and enhance the success of compliance with this NESHAP. 74 FR 26152. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under this NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter’s assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, in evaluating the fourth factor in EPA’s balancing test EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of the NESHAP.

*Comment:* One commenter explains that title V provides important monitoring benefits, and, according to the commenter, EPA admits that title V monitoring, “may improve compliance \* \* \* by requiring monitoring \* \* \* to assure compliance with emission limitations and control technology requirements imposed in the standard.” (74 FR at 26151) The commenter further states that “EPA argues that ‘the monitoring, recordkeeping, and reporting requirements in this proposed rule are sufficient to assure compliance with the requirements of the proposed rule.’” Id. The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter states that, for this reason also, its claim that title V requirements are “unnecessarily burdensome” is arbitrary and capricious, and its exemption is unlawful, arbitrary, and capricious.

*Response:* As noted in the earlier comment, EPA used the four-factor test

to determine if title V requirements were unnecessarily burdensome. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source categories. *See* 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping, and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. *See* 70 FR 75323.

The commenter asserts that “EPA argues that ‘the monitoring, recordkeeping, and reporting requirements in this proposed rule are sufficient to assure compliance with the requirements of the proposed rule.’” We nowhere state or imply that the only monitoring, recordkeeping, and reporting required for the rule is in the form of recordkeeping. As stated in the proposal, we required daily, weekly, monthly, and yearly testing of particulate control devices, as well as annual compliance reports and deviation reports in addition to the recordkeeping that serves as monitoring for the particulate control devices. The commenter does not provide any evidence that contradicts the conclusion that the proposed monitoring, recordkeeping, and reporting requirements are sufficient to assure compliance with the standards in the rule.

Based on the foregoing, we considered whether title V monitoring, recordkeeping, and reporting requirements would lead to significant improvements in the monitoring, recordkeeping, and reporting requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring, recordkeeping, and reporting requirements in this area source rule can assure compliance for those sources we are exempting.

For the reasons described above and in the proposed rule, the first factor supports an exemption. Assuming, for the sake of argument, that the first factor alone cannot support the exemption, the four-factor balancing test requires EPA to examine the factors, in combination, and determine whether the factors, viewed together, weigh in favor of exemption. *See* 70 FR 75326. As explained above, we determined that the factors, weighed together, support title V exemption for this source category.

*Comment:* One commenter believes EPA argued that its own belief that title

V is a “significant burden” on area sources further justifies its exemption (74 FR 26151). According to the commenter, regardless of whether EPA regards the burden as “significant,” the Agency may not exempt a category from compliance with title V requirements unless compliance is “unnecessarily burdensome.” The commenter states that, regardless, EPA’s claims about the alleged significance of the burden of compliance are entirely conclusory and could be applied equally to any major or area source category. The commenter also states that the Agency does not show that the compliance burden is especially great for any of the sources it proposes to exempt, and, thus, does not demonstrate that the alleged burden necessitates treating them differently from other categories by exempting them from compliance with title V requirements.

*Response:* The commenter appears to take issue with the formulation of the second factor of the four-factor balancing test. Specifically, the commenter states that EPA must determine that title V compliance is “unnecessarily burdensome” and not a “significant burden,” as expressed in the second factor of the four-factor balancing test.

As we have stated before, at proposal we found the burden placed on these sources in complying with the title V requirements is significant when we applied the four-factor balancing test. We note that the commenter, in other parts of comments on the title V exemptions, argues that EPA must demonstrate that every title V requirement is “unnecessary” for a particular source category before an exemption can be granted, but makes no mention of the “burden” of those requirements on area sources; here the commenter argues that “significant burden” is not appropriate for the second factor. Notwithstanding the commenter’s inconsistency, as explained above, the four-factor balancing test was established in the Exemption Rule and we did not re-open EPA’s interpretation of the term “unnecessarily burdensome” in this rule. As explained above, we maintain that the Agency’s interpretation of the term “unnecessarily burdensome,” as set forth in the Exemption Rule and reiterated in the proposal to this rule, is reasonable.

Contrary to the commenter’s assertions, we properly analyzed the second factor of the four-factor balancing test. *See* 70 FR 75320. Under that factor, EPA considers whether title V permitting would impose a significant burden on the area source categories,

and whether that burden would be aggravated by any difficulty that the sources may have in obtaining assistance from the permitting agencies. *See* 70 FR 75324. The commenter appears to assert that the second factor must be satisfied for EPA to exempt an area source category from title V, but, as explained above, the four factors are considered in combination. We have concluded that the second factor, in combination with the other factors, supports an exemption for the paints and allied products manufacturing area sources that we are exempting from compliance with title V in this final rule.

Therefore, we disagree with the commenter’s assertion that EPA’s finding (i.e., that the burden of obtaining a title V permit is significant, and does not equate to the required finding that the burden is unnecessary) is misplaced. While EPA could have found that the second factor alone could justify the exemption for the sources we are exempting in this rule, EPA found that the other three factors also support exempting these sources from the title V requirements because the permitting requirements are unnecessarily burdensome for the paints and allied products manufacturing area sources we are exempting.

*Comment:* According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 26152). The commenter stated that EPA’s conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe, with respect to any of the categories it proposes to exempt, that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in this NESHAP, would not provide additional compliance benefits. The commenter also states that the only basis for EPA’s claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress’ decisions reflected in the CAA’s text and legislative history.

*Response:* The commenter mischaracterizes the first and third factors of the four-factor balancing test and takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition

of title V permit requirements is unnecessarily burdensome for the source categories. The commenter also mischaracterizes the first factor of the four-factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test, which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits, as the commenter asserts. While EPA recognizes that requiring a title V permit offers additional compliance options, the statute provides EPA with the discretion to evaluate whether compliance with title V would be unnecessarily burdensome to specific area sources. For the sources we are exempting, we conclude that requiring title V permits would be unnecessarily burdensome.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of “whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.” Thus, contrary to the commenter’s assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

The monitoring, recordkeeping and reporting requirements in the rule are sufficient to assure compliance with the requirements of this rule for the sources we are exempting, consistent with the goal in title V permitting. For example, in the Notification of Compliance Status report, the source must certify that, if necessary, it has implemented management practices and installed controls. See 40 CFR 63.11603 in the final rule. The source must also submit annual deviation reports to the permitting agency if there has been a deviation in the requirements of the rule. See 40 CFR 63.11501 in the final rule. The requirements in the final rule provide sufficient basis to assure compliance, and EPA does not believe that the title V requirements, if applicable to the sources that we are exempting, would offer significant

improvements in the compliance of the sources with the rule.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates “whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.” Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination. Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA considers the costs of title V permitting requirements, including consideration of any improvement in compliance above what the rule requires. In considering the third factor, we stated, in part, that, “[b]ecause the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for these area source categories.” See 74 FR 26152.

Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the area source category we are exempting from title V in this final rule. The commenter’s statements do not demonstrate a flaw in EPA’s application of the four-factor balancing test to the specific facts of the sources we are exempting, nor do the comments provide sufficient basis for the Agency to reconsider its.

*Comment:* According to one commenter, EPA argued that alternative State implementation and enforcement programs assure compliance with the underlying NESHAP without relying on title V permits (74 FR 26152). The commenter states that again, EPA’s claim is entirely conclusory and generic. The commenter also states that “the Agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary” (emphasis added). Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA

that are generally applicable to all categories (along with some small business and voluntary programs). The commenter says that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, the Agency’s argument boils down to the generic and conclusory claim that it generally views title V requirements as unnecessary. The commenter states that, while this may be EPA’s view, it was not Congress’ view when Congress enacted title V, and a general view that title V is unnecessary, does not suffice to show that title V compliance is unnecessarily burdensome.

*Response:* Contrary to the commenters’ assertions, EPA does believe that title V is appropriate under certain circumstances; we think that exemption from title V is appropriate for those sources.

In this comment, the commenter again takes issue with the Agency’s test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term “unnecessarily burdensome” is not the subject of this rulemaking. In any event, as explained above, we believe the Agency’s interpretation of the term “unnecessarily burdensome” is a reasonable one. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that, prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. EPA believes that these programs will be sufficient to assure compliance with the rule. EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113, and 114. EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source NESHAP. The commenter argues that EPA cannot exempt any of the area sources in these categories from title V permitting requirements because “[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary” (emphasis added). As an initial matter, EPA cannot exempt major sources from title V permitting. 42 U.S.C. 502(a). As

for area sources, the standard that the commenter proposes—that EPA must show that “title V compliance is unnecessary”—is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome.

Furthermore, we disagree that the basis for excluding the paints and allied products manufacturing area sources we are exempting from title V requirements is generally applicable to sources in any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the source category at issue in this rule. For example, in assessing whether the costs of requiring the sources to obtain a title V permit were burdensome, we concluded that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance based on the control device requirements and management practices of this rule.

*Comment:* One commenter states that, as EPA concedes, the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. Furthermore, the commenter states that EPA conceded this point. See 74 FR 26152. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare, and the environment. The commenter says that instead, EPA offered only the conclusory assertion that “the level of control would remain the same,” whether title V permits are required or not (74 FR 26512). The commenter continues by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in the proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter states that those arguments are wrong for the reasons given above, and, therefore, EPA’s claims about public health, welfare, and the environment are wrong too. The commenter states that Congress enacted title V for a reason: To assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA’s proposed rule deprives the public—would improve compliance with the underlying standards and, thus, have benefits for public health, welfare, and the

environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again, simply rests on its own apparent belief that they are never necessary. The commenter concludes that, for the reasons given above, that the attempt to substitute EPA’s judgment for Congress’ is unlawful and arbitrary.

*Response:* Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator “finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.” See CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources “unnecessarily burdensome,” as requiring consideration of the four factors discussed above. At proposal, EPA applied these four factors to the paints and allied products manufacturing area source category subject to this rule, and concluded that requiring title V for this area source category would be unnecessarily burdensome. We maintain that this conclusion is accurate for the sources we are exempting in this rule.

In addition to determining that title V would be unnecessarily burdensome on the area source category, as in the Exemption Rule, EPA also considered, consistent with our interpretation of the legislative history, whether exempting the area source categories would adversely affect public health, welfare, or the environment. As explained in the proposal preamble, we concluded that exempting the area source category at issue in this rule would not adversely affect public health, welfare, or the environment because the level of control would be the same even if title V applied. We further explained in the proposal preamble that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information to demonstrate that the exemption from title V that we are finalizing will adversely affect public health, welfare, or the environment.

## VI. Impacts of the Final Standards

Existing paints and allied products manufacturing facilities have made significant emission reductions since 1990 through product reformulation, process and cleaning changes,

installation of control equipment, and as a result of OSHA regulations. Affected sources appear to be well-controlled, and our GACT determination reflects such controls. We estimate that the only impacts associated with this rule are the capital and annual costs of installing and operating a particulate control device, the capital cost of adding lids or covers to process vessels, and the compliance requirements (i.e., reporting, recordkeeping, and testing).

We estimate that 21 percent of the facilities, or 460 area sources, will be required to install particulate control equipment. The total capital costs for installing particulate control devices is estimated to be \$8.1 million and the annual cost is estimated to be \$3.1 million per year.

We estimate that 110 facilities will be required to install lids or covers on their process, mixing, and storage vessels. We estimate that it will cost \$38,000 in total capital costs and \$5,500 annually. However, the rule will also provide a cost savings to these same facilities, because they will have more coatings product at the end of the manufacturing process.

The other affected facilities will incur costs only for submitting the notifications and for completing the annual compliance certification. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be \$147 per facility.

Through compliance with this rule, these facilities will reduce total PM emissions by 6,300 tons/yr (5,700 Mg/yr), total metal HAP emissions by 4.2 tons/yr (3.8 Mg/yr), and listed urban metal HAP (cadmium, chromium, lead, nickel) emissions by 1.6 tons/yr (1.5 Mg/yr). We estimate that requiring the use of covers on process vessels will reduce VOC emissions by 1,700 tons/yr (1,600 Mg/yr), volatile HAP emissions by 169 tons/yr (153 Mg/yr), and listed urban volatile HAP (benzene, methylene chloride) emissions by 4.3 tons/yr (3.9 Mg/yr).

## VII. Statutory and Executive Order Reviews

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

This action is a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore subject to review under the Executive Order.

### B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under

the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP requires Paints and Allied Products Manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records are required to demonstrate compliance with the opacity and visual emissions (VE) requirements. The owner or operator of a paints and allied products manufacturing facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A), although we have deemed that annual compliance reports are sufficient instead of semiannual reports.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 2,887 labor hours per year at a cost of \$322,009 or approximately \$147 per facility. The average annual reporting burden is almost 3 hours per response, with approximately 2 responses per facility for 730 respondents. There are no capital and operating and maintenance costs associated with the final rule requirements for existing sources. Burden is defined at 5 CFR 1320.3(b).

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. EPA displays OMB control numbers in various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

When this ICR is approved by OMB, the Agency will publish a **Federal**

**Register** notice announcing this approval and displaying the OMB control number for the approved information collection requirements contained in this final rule. We will also publish a technical amendment to 40 CFR part 9 in the **Federal Register** to consolidate the display of the OMB control number with other approved information collection requirements.

#### *C. 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 would 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 this rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201; (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 this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule is estimated to impact a total of almost 2,200 area source paints and allied products manufacturing facilities; over ninety percent of these facilities are estimated to be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be approximately 0.13 percent for the estimated 460 facilities that would not initially be in compliance. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce such impact. The standards represent practices and controls that are common throughout the paints and allied products manufacturing industry. The

standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed in consultation with small business representatives on the state and national levels and the trade associations that represent small businesses.

#### *D. Unfunded Mandates Reform Act*

This final rule does 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 one year. This rule is not expected to impact State, local, or tribal governments. The nationwide annualized cost of this rule for affected industrial sources is \$3.1 million/yr. Thus, this rule would not be subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

This final rule would also not be subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would not apply to such governments and would impose no obligations upon them.

#### *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, as specified in Executive Order 13132. This rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule imposes no requirements on tribal governments; thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This action is

not subject to EO 13045 because it is based solely on technology performance.

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

This final rule is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. Existing energy requirements for this industry would not be significantly impacted by the additional controls or other equipment that may be required by this rule.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113 (15 U.S.C. 272 note) directs 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Method 203C and EPA Method 22.

Under § 63.7(f) and § 63.8(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal

executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule establishes national standards for the Paints and Allied Products Manufacturing area source category; this will reduce HAP emissions, therefore decreasing the amount of emissions to which all affected populations are exposed.

*K. 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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 this 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). This final rule will be effective on December 3, 2009.

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

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

Dated: November 16, 2009.

**Lisa P. Jackson,**  
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. Part 63 is amended by adding subpart CCCCCC to read as follows:

**Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing**

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**Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing**

**Applicability and Compliance Dates**

**§ 63.11599 Am I subject to this subpart?**

(a) You are subject to this subpart if you own or operate a facility that performs paints and allied products manufacturing that is an area source of hazardous air pollutant (HAP) emissions and processes, uses, or generates materials containing HAP, as defined in § 63.11607.

(b) The affected source consists of all paints and allied products manufacturing processes that process, use, or generate materials containing HAP at the facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before June 1, 2009.

(2) An affected source is new if you commenced construction or



reconstruction of the affected source on or after June 1, 2009.

(3) A facility becomes an affected source when you commence processing, using, or generating materials containing HAP, as defined in § 63.11607.

(c) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Whether you have a title V permit or not, you must continue to comply with the provisions of this subpart.

(d) An affected source is no longer subject to this subpart if the facility no longer processes, uses, or generates materials containing HAP and does not plan to process, use or generate materials containing HAP in the future.

(e) The standards of this subpart do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

#### **§ 63.11600 What are my compliance dates?**

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart by December 3, 2012.

(b) If you own or operate a new affected source, you must achieve compliance with the applicable provisions of this subpart by December 3, 2009, or upon startup of your affected source, whichever is later.

(c) If you own or operate a facility that becomes an affected source in accordance with § 63.11599(b)(3) after the applicable compliance date in paragraphs (a) or (b) of this section, you must achieve compliance with the applicable provisions of this subpart by the date that you commence processing, using, or generating materials containing HAP, as defined in § 63.11607.

#### **Standards, Monitoring, and Compliance Requirements**

##### **§ 63.11601 What are the standards for new and existing paints and allied products manufacturing facilities?**

(a) For each new and existing affected source, you must comply with the requirements in paragraphs (a)(1) through (6) of this section. These requirements apply at all times.

(1) You must add the dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel and operate a capture system that minimizes fugitive particulate emissions during the addition of dry pigments and solids that contain compounds of

cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling process.

(2) You must capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to a process vessel. This requirement does not apply to pigments and other solids that are in paste, slurry, or liquid form.

(3) *You must:* (i) Capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to a process vessel; or

(ii) Add pigments and other solids that contain compounds of cadmium, chromium, lead, or nickel only in paste, slurry, or liquid form.

(4) *You must:* (i) Capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to the grinding and milling process; or

(ii) Add pigments and other solids that contain compounds of cadmium, chromium, lead, or nickel to the grinding and milling process only in paste, slurry, or liquid form.

(5) *You must:* (i) Capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the grinding and milling of materials containing compounds of cadmium, chromium, lead, or nickel;

(ii) Fully enclose the grinding and milling equipment during the grinding and milling of materials containing compounds of cadmium, chromium, lead, or nickel; or

(iii) Ensure that the pigments and solids are in the solution during the grinding and milling of materials containing compounds of cadmium, chromium, lead, or nickel.

(6) The visible emissions from the particulate control device exhaust must not exceed 10-percent opacity for particulate control devices that vent to the atmosphere. This requirement does not apply to particulate control devices that do not vent to the atmosphere.

(7) [RESERVED]

(b) For each new and existing affected source, you must comply with the requirements in paragraphs (b)(1) through (5) of this section.

(1) Process and storage vessels that store or process materials containing benzene or methylene chloride, except for process vessels which are mixing vessels, must be equipped with covers or lids meeting the requirements of paragraphs (b)(1)(i) through (iii) of this section.

(i) The covers or lids can be of solid or flexible construction, provided they do not warp or move around during the manufacturing process.

(ii) The covers or lids must maintain contact along at least 90-percent of the vessel rim. The 90-percent contact requirement is calculated by subtracting the length of any visible gaps from the circumference of the process vessel, and dividing this number by the circumference of the process vessel. The resulting ratio must not exceed 90-percent.

(iii) The covers or lids must be maintained in good condition.

(2) Mixing vessels that store or process materials containing benzene or methylene chloride must be equipped with covers that completely cover the vessel, except as necessary to allow for safe clearance of the mixer shaft.

(3) All vessels that store or process materials containing benzene or methylene chloride must be kept covered at all times, except for quality control testing and product sampling, addition of materials, material removal, or when the vessel is empty. The vessel is empty if:

(i) All materials containing benzene or methylene chloride have been removed that can be removed using the practices commonly employed to remove materials from that type of vessel, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters (one inch) depth of residue remains on the bottom of the vessel, or no more than 3 percent by weight of the total capacity of the vessel remains in the vessel.

(4) Leaks and spills of materials containing benzene or methylene chloride must be minimized and cleaned up as soon as practical, but no longer than 1 hour from the time of detection.

(5) Rags or other materials that use a solvent containing benzene or methylene chloride for cleaning must be kept in a closed container. The closed container may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

##### **§ 63.11602 What are the performance test and compliance requirements for new and existing sources?**

(a) For each new and existing affected source, you must demonstrate initial

compliance by conducting the inspection and monitoring activities in paragraph (a)(1) of this section and ongoing compliance by conducting the inspection and testing activities in paragraph (a)(2) of this section.

(1) Initial particulate control device inspections and tests. You must conduct an initial inspection of each particulate control device according to the requirements in paragraphs (a)(1)(i) through (iii) of this section and perform a visible emissions test according to the requirements of paragraph (a)(1)(iv) of this section. You must record the results of each inspection and test according to paragraph (b) of this section and perform corrective action where necessary. You must conduct each inspection no later than 180 days after your applicable compliance date for each control device which has been operated within 60 days following the compliance date. For a control device which has not been installed or operated within 60 days following the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet particulate control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the system ductwork and control equipment for leaks and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system.

(ii) For each dry particulate control system, you must visually inspect the system ductwork and dry particulate control unit for leaks. You must also inspect the inside of each dry particulate control unit for structural integrity and condition.

(iii) An initial inspection of the internal components of a wet or dry particulate control system is not required if there is a record that an inspection meeting the requirements of this subsection has been performed within the past 12 months and any maintenance actions have been resolved.

(iv) For each particulate control device, you must conduct a visible emission test consisting of three 1-minute test runs using Method 203C (40 CFR part 51, appendix M). The visible emission test runs must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling equipment. If the average test results of the visible emissions test runs indicate an opacity greater than the applicable limitation in § 63.11601(a),

you must take corrective action and retest within 15 days.

(2) Ongoing particulate control device inspections and tests. Following the initial inspections, you must perform periodic inspections of each PM control device according to the requirements in paragraphs (a)(2)(i) or (ii) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary. You must also conduct tests according to the requirements in paragraph (a)(2)(iii) of this section and record the results according to paragraph (b) of this section.

(i) You must inspect and maintain each wet particulate control system according to the requirements in paragraphs (a)(2)(i)(A) through (C) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet particulate control system.

(B) You must conduct weekly visual inspections of any flexible ductwork for leaks.

(C) You must conduct inspections of the rigid, stationary ductwork for leaks, and the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(ii) You must inspect and maintain each dry particulate control unit according to the requirements in paragraphs (a)(2)(ii)(A) and (B) of this section.

(A) You must conduct weekly visual inspections of any flexible ductwork for leaks.

(B) You must conduct inspections of the rigid, stationary ductwork for leaks, and the interior of the dry particulate control unit for structural integrity and to determine the condition of the fabric filter (if applicable) every 12 months.

(iii) For each particulate control device, you must conduct a 5-minute visual determination of emissions from the particulate control device every 3 months using Method 22 (40 CFR part 60, appendix A–7). The visible emission test must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling equipment. If visible emissions are observed for two minutes of the required 5-minute observation period, you must conduct a Method 203C (40 CFR part 51, appendix M) test within 15 days of the time when visible emissions were observed. The Method 203C test will consist of three 1-minute test runs and must be performed during the

addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel HAP to a process vessel or to the grinding and milling equipment. If the Method 203C test runs indicates an opacity greater than the limitation in § 63.11601(a)(4), you must comply with the requirements in paragraphs (a)(2)(iii)(A) through (C) of this section.

(A) You must take corrective action and retest using Method 203C within 15 days. The Method 203C test will consist of three 1-minute test runs and must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling equipment. You must continue to take corrective action and retest each 15 days until a Method 203C test indicates an opacity equal to or less than the limitation in § 63.11601(a)(6).

(B) You must prepare a deviation report in accordance with § 63.11603(b)(3) for each instance in which the Method 203C opacity results were greater than the limitation in § 63.11601(a)(6).

(C) You must resume the visible determinations of emissions from the particulate control device in accordance with paragraph (a)(2)(iii) of this section 3 months after the previous visible determination.

(b) You must record the information specified in paragraphs (b)(1) through (6) of this section for each inspection and testing activity.

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Technique or method used;

(4) Operating conditions during the activity;

(5) Results; and

(6) Description of correction actions taken.

#### **§ 63.11603 What are the notification, reporting, and recordkeeping requirements?**

(a) *Notifications.* You must submit the notifications identified in paragraphs (a)(1) and (2) of this section.

(1) Initial Notification of Applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than June 1, 2010. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 180 days after initial start-up of the operations or June 1, 2010, whichever is later. The notification of applicability must include the information specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source; and

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date.

(2) *Notification of Compliance Status.*

If you own or operate an existing affected source, you must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions by June 3, 2013. If you own or operate a new affected source, you must submit a Notification of Compliance Status within 180 days after initial start-up, or by June 1, 2010, whichever is later. If you own or operate an affected source that becomes an affected source in accordance with § 63.11599(b)(3) after the applicable compliance date in § 63.11600 (a) or (b), you must submit a Notification of Compliance Status within 180 days of the date that you commence processing, using, or generating materials containing HAP, as defined in 63.11607. This Notification of Compliance Status must include the information specified in paragraphs (a)(2)(i) and (ii) of this section.

(i) Your company's name and address;

(ii) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification, a description of the method of compliance (i.e., compliance with management practices, installation of a wet or dry scrubber) and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart.

(b) *Annual Compliance Certification Report.* You must prepare an annual compliance certification report according to the requirements in paragraphs (b)(1) through (b)(3) of this section. This report does not need to be submitted unless a deviation from the requirements of this subpart has occurred. When a deviation from the requirements of this subpart has occurred, the annual compliance certification report must be submitted along with the deviation report.

(1) *Dates.* You must prepare and, if applicable, submit each annual compliance certification report according to the dates specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) The first annual compliance certification report must cover the first annual reporting period which begins the day of the compliance date and ends on December 31.

(ii) Each subsequent annual compliance certification report must cover the annual reporting period from January 1 through December 31.

(iii) Each annual compliance certification report must be prepared no later than January 31 and kept in a readily-accessible location for inspector review. If a deviation has occurred during the year, each annual compliance certification report must be submitted along with the deviation report, and postmarked no later than February 15.

(2) *General Requirements.* The annual compliance certification report must contain the information specified in paragraphs (b)(2)(i) through (iii) of this section.

(i) Company name and address;

(ii) A statement in accordance with § 63.9(h) of the General Provisions that is signed by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart; and

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 12-month period beginning on January 1 and ending on December 31.

(3) *Deviation Report.* If a deviation has occurred during the reporting period, you must include a description of deviations from the applicable requirements, the time periods during which the deviations occurred, and the corrective actions taken. This deviation report must be submitted along with your annual compliance certification report, as required by paragraph (b)(1)(iii) of this section.

(c) *Records.* You must maintain the records specified in paragraphs (c)(1) through (4) of this section in accordance with paragraphs (c)(5) through (7) of this section, for five years after the date of each recorded action.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted in accordance with paragraph (a) of this section, and all documentation supporting any Notification of Applicability and Notification of Compliance Status that you submitted.

(2) You must keep a copy of each Annual Compliance Certification Report prepared in accordance with paragraph (b) of this section.

(3) You must keep records of all inspections and tests as required by § 63.11602(b).

(4) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(5) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(6) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

(e) If you no longer process, use, or generate materials containing HAP after December 3, 2009, you must submit a Notification in accordance with § 63.11599(d), which must include the information specified in paragraphs (e)(1) and (2) of this section.

(1) Your company's name and address;

(2) A statement by a responsible official indicating that the facility no longer processes, uses, or generates materials containing HAP, as defined in § 63.11607, and that there are no plans to process, use or generate such materials in the future. This statement should also include the date by which the company ceased using materials containing HAP, as defined in 63.11607, and the responsible official's name, title, phone number, e-mail address and signature.

**§ 63.11604 [Reserved]**

**Other Requirements and Information**

**§ 63.11605 What General Provisions apply to this subpart?**

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

**§ 63.11606 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a state, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A “major change to test method” is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A “major change to monitoring” is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A “major change to recordkeeping/reporting” is defined in § 63.90. As required in § 63.11432, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

**§ 63.11607 What definitions apply to this subpart?**

Terms used in this subpart are defined in the Clean Air Act, § 63.2, and in this section as follows:

*Construction* means the onsite fabrication, erection, or installation of an affected source. Addition of new equipment to an affected source does not constitute construction, but it may constitute reconstruction of the affected source if it satisfies the definition of reconstruction in § 63.2.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or management practices established by this subpart;

(2) Fails to meet any term or condition that is adopted to implement a requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart.

*Dry particulate control system* means an air pollution control device that uses filtration, impaction, or electrical forces to remove particulate matter in the exhaust stream.

*Fabric filter* means an air collection and control system that utilizes a bag filter to reduce the emissions of metal HAP and other particulate matter.

*Material containing HAP* means a material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material. Benzene and methylene

chloride are volatile HAP. Compounds of cadmium, chromium, lead and/or nickel are metal HAP.

*Paints and allied products* means materials such as paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials that are intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives.

*Paints and allied products manufacturing* means the production of paints and allied products, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing processes that produce these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include:

(1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents;

(2) The manufacture of electroplated and electroless metal films;

(3) The manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and

(4) Activities by end users of paints or allied products to ready those materials for application.

*Paints and allied products manufacturing process* means all the equipment which collectively function to produce a paint or allied product. A process may consist of one or more unit operations. For the purposes of this subpart, the manufacturing process includes any, all, or a combination of, weighing, blending, mixing, grinding, tinting, dilution or other formulation. Cleaning operations, material storage and transfer, and piping are considered part of the manufacturing process. This definition does not cover activities by end users of paints or allied products to ready those materials for application. Quality assurance and quality control laboratories are not considered part of a paints and allied products manufacturing process. Research and development facilities, as defined in section 112(c)(7) of the CAA are not considered part of a paints and allied products manufacturing process.

*Particulate matter control device* means any equipment, device, or other

article that is designed and/or installed for the purpose of reducing or preventing the discharge of metal HAP emissions to the atmosphere.

*Process vessel* means any stationary or portable tank or other vessel of any capacity and in which mixing, blending, diluting, dissolving, temporary holding, and other processing steps occur in the manufacturing of a coating.

*Responsible official* means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: “Responsible official” shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

*Storage vessel* means a tank, container or other vessel that is used to store volatile liquids that contain one or more of the listed volatile HAP, benzene or methylene chloride, as raw material feedstocks or products. It also includes objects, such as rags or other containers which are stored in the vessel. The following are not considered storage vessels for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing volatile liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process vessels.

*Wet particulate control device* means an air pollution control device that uses water or other liquid to contact and

remove particulate matter in the exhaust stream.

**§ 63.11608–63.11638 [Reserved]**

**Tables to Subpart CCCCCC of Part 63**

As required in § 63.11599, you must meet each requirement in the following

table that applies to you. Part 63 General Provisions that apply for Paints and Allied Products Manufacturing Area Sources:

**TABLE 1 TO SUBPART CCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO PAINTS AND ALLIED PRODUCTS MANUFACTURING AREA SOURCES**

Citation	Subject	Applies to subpart CCCCCC
63.1 .....	Applicability .....	Yes.
63.2 .....	Definitions .....	Yes.
63.3 .....	Units and abbreviations .....	Yes.
63.4 .....	Prohibited activities .....	Yes.
63.5 .....	Preconstruction review and notification requirements .....	No.
63.6(a), (b)(1)–(b)(5), (c), (e)(1), (f)(2), (f)(3), (g), (i), (j).	Compliance with standards and maintenance requirements .....	Yes.
63.7(a), (e), and (f) .....	Performance testing requirements .....	Yes.
63.8 .....	Monitoring requirements .....	No.
63.9(a)–(d), (i), and (j) .....	Notification Requirements .....	Yes.
63.10(a), (b)(1) .....	Recordkeeping and Reporting .....	Yes.
63.10(d)(1) .....	Recordkeeping and Reporting .....	Yes.
63.11 .....	Control device and work practice requirements .....	No.
63.12 .....	State authority and delegations .....	Yes.
63.13 .....	Addresses of state air pollution control agencies and EPA regional offices .....	Yes.
63.14 .....	Incorporation by reference .....	No.
63.15 .....	Availability of information and confidentiality .....	Yes.
63.16 .....	Performance track provisions .....	No.

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