

§ 117.949 [Amended]

79. In § 117.949 remove the last sentence of the section.

80. Revise § 117.968 to read as follows:

§ 117.968 Gulf Intracoastal Waterway.

The drawspan for the Port Isabel Drawbridge, mile 666.0, must open on signal; except that, from 5 a.m. to 8 p.m. on weekdays only, excluding Federal, state, and local holidays, the drawspan need open only on the hour for pleasure craft. The drawspan must open on signal at anytime for commercial vessels. When the drawspan is open for a commercial vessel, waiting pleasure craft must be passed.

81. Revise § 117.977 to read as follows:

§ 117.977 Pelican Island Causeway, Galveston Channel.

The drawspan for the Pelican Island Causeway Drawbridge across Galveston Channel, mile 4.5 of the Galveston Channel, (GIWW mile 356.1) at Galveston, Texas, must open on signal; except that, from 6:40 a.m. to 8:10 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawspan need not be opened for passage of vessels. Public vessels of the United States must be passed at anytime.

82. In § 117.993 revise paragraph (a) to read as follows:

§ 117.993 Lake Champlain.

(a) The drawspan for each of the drawbridges listed in this section must open as soon as possible for the passage of public vessels of the United States.

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83. In § 117.1023 revise paragraph (b) to read as follows:

§ 117.1023 Pamunkey River.

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(b) Public vessels of the United States must pass at anytime.

§ 117.1039 [Removed]

84. Remove § 117.1039.

Appendix A to Part 117 [Removed]

85. Remove Appendix A To part 117.

Dated: May 5, 2006.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.

[FR Doc. 06-4631 Filed 5-16-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[EPA-HQ-OAR-2003-0178; FRL-8171-2]

RIN 2060-AM72

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 11, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing. The promulgated rule applies to the manufacture of coatings, such as paints, inks, and adhesives. The proposed amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending; not reaction or separation processes used in chemical manufacturing.

The proposed amendments also clarify the compliance date for certain equipment that is part of a chemical manufacturing process unit that is also used to produce a coating.

DATES: *Comments.* Comments must be received on or before July 3, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 30, 2006, a public hearing will be held on June 1, 2006.

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

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov.

- Fax: (202) 566-1741.

- Mail: Air and Radiation Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a duplicate copy, if possible. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

- Hand Delivery: Air and Radiation Docket, EPA, Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0178. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., 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. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B-102, 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 and Radiation Docket is (202) 566-1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Coatings and Chemicals Group (E143-01), Sector

Policies and Programs Division, EPA, Research Triangle Park, NC 27711; telephone number: (919) 541-5402; fax

number: (919) 541-3470; e-mail address: mcdonald.randy@epa.gov.

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

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

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.7985 of the rule, as well as in today's amendment to the definitions sections. If you have questions regarding the applicability of the amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Randy McDonald, Coatings and Chemicals Group, Sector Policies and Programs Division (E143-01), EPA, Research Triangle Park, NC 27711, telephone number: (919) 541-5402, e-mail address: mcdonald.randy@epa.gov, at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing also must call Mr. Randy McDonald to verify the time, date, and location of the hearing. A public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed amendments.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network (TTN).

Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

Organization of this Document. The information presented in this preamble is organized as follows:

- I. Why are we proposing amendments to 40 CFR part 63, subpart HHHHH?
- II. How are we proposing to amend 40 CFR part 63, subpart HHHHH?
 - A. Definition of Coating and Applicability
 - B. Process Unit Groups
- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act

I. Why are we proposing amendments to 40 CFR part 63, subpart HHHHH?

On December 11, 2003, we promulgated NESHAP for miscellaneous coating manufacturing as subpart HHHHH of 40 CFR part 63 (68 FR 69164). Subpart HHHHH applies to the facilitywide collection of equipment used to manufacture coatings. The term "coating" is defined as any material such as paint, ink, or adhesive that is intended to be applied to a substrate. A "coating" consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, these materials are described by the North American Industry Classification System (NAICS) codes 3255 and 3259.

In the preamble to the final subpart HHHHH rule, in response to a comment that the definition of coating is too expansive, we discussed how to determine whether subpart HHHHH or 40 CFR part 63, subpart FFFF, National

Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, applies. We stated:

If the product being manufactured is a coating, and the manufacturing steps involve blending, mixing, diluting, and related formulation operations, without an intended reaction, then the process is subject to subpart HHHHH. If a reaction as well as various other operations is involved, then the process typically is subject to subpart FFFF. However, if the downstream formulation operations are distinct from the preceding synthesis process(es), (perhaps because the synthesized product is isolated and some of it is sold or transferred offsite), then the formulation operations are subject to subpart HHHHH, and the synthesis operations are subject to subpart FFFF. In the event that equipment used for manufacturing products in processes that are subject to subpart FFFF is also used for coating manufacturing operations that are subject to subpart HHHHH, then the primary use of the equipment determines applicability.

On May 13, 2005 (70 FR 25678), EPA clarified how to determine whether subpart FFFF or subpart HHHHH applies when equipment is used to produce both subpart FFFF and HHHHH products. We stated:

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

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

generally determines applicability, not primary use.

Because the definition of coating at 40 CFR 63.8105 in subpart HHHHH does not specify that coatings are produced only by blending, mixing, diluting, and related formulation operations, without chemical synthesis or separation, some products of synthetic organic chemical manufacturing could be considered coatings. This overly broad definition of "coating" expands the applicability of subpart HHHHH to equipment intended to be covered by subpart FFFF. We are proposing to revise the definition of coating such that the applicability of the final rule accurately and appropriately reflects the coating manufacturing industry and the basis for the maximum achievable control technology (MACT) floor.

Separately, the recent extension of the compliance date for subpart FFFF (see 71 FR 10439) raises a timing issue with respect to subpart FFFF and subpart HHHHH overlap. The extension for the compliance date for subpart FFFF results in the compliance date for subpart HHHHH occurring before the Miscellaneous Organic Chemical Manufacturing NESHAP compliance date, thus creating a problem for plants with equipment subject to both subparts FFFF and HHHHH who opt to develop a process unit group (PUG). A PUG may be established and developed under subpart FFFF for a process unit that is used to produce both a subpart FFFF and subpart HHHHH product. If the primary product is subject to subpart FFFF, then the plant may comply with subpart FFFF, and not also HHHHH, for all process units in the PUG according to 40 CFR 63.2535(l)(3)(i). In the preamble to the final subpart FFFF rule, in response to a comment that the proposed rule did not go far enough to prevent multipurpose equipment from being subject to more than one MACT standard, we discuss the basis of the PUG. We stated:

We recognize that 40 CFR part 63, subpart FFFF, will affect manufacturers of specialty chemicals and other products whose multipurpose production processes are subject to other MACT standards, creating situations where there are overlapping requirements. The challenge is how to consolidate overlapping requirements and still maintain the MACT reductions anticipated from each of the various standards. Many MACT standards that regulate specialty chemicals, pesticide active ingredients (PAI), SOCM, and polymers and resins have specific language relating to overlap. The predominant method of addressing possible overlap is by designating a primary product and requiring compliance with the final rule that applies to the primary product at all times when the flexible process

unit is operating. The presumption is that the equipment should be regulated according to the standard that effectively applies for a majority of products produced.

After considering the provisions in previous rules, we decided to include in the final rule a provision that is essentially the same as in the PAI rule. This provision is based on developing a PUG from a collection of multipurpose equipment, determining the primary product for the PUG, and, generally, complying with the rule that applies to the primary product for all process units within the PUG.

Because we have extended the compliance date for subpart FFFF, a source that primarily manufactures organic chemicals, but also produces a coating product in the same equipment, would not be able to comply with subparts FFFF and HHHHH as EPA intended during the period between the compliance date for subpart HHHHH (December 11, 2006) and subpart FFFF (May 10, 2008). If the source had developed a compliance strategy that was based on a PUG according to 40 CFR 63.2535(l)(3)(i), the compliance option would no longer be available. The source would have to either install and operate interim controls for coating manufacturing operations or comply with the requirements of subpart FFFF on the compliance date for subpart HHHHH, but before the compliance date for subpart FFFF. For the reasons set forth in the discussion of the compliance date extension in the preamble to the proposed amendments for subpart FFFF (70 FR 73098, December 8, 2005), it is unlikely that sources will be able to comply with the revised subpart FFFF by the compliance date for subpart HHHHH. Affected sources will have to review their compliance strategy due to possible significant amendments to subpart FFFF, such as changes to requirements for process condensers and changes to the definition of batch process vent and wastewater stream. If the source was planning to comply with subpart HHHHH by referencing 40 CFR 63.2535(l)(3)(i), it is unlikely the source would have enough time to design and install interim controls. Thus, relying on the presumption that equipment should be regulated according to the standard that effectively applies for a majority of products produced, we are proposing to amend the final HHHHH rule to reference subpart FFFF requirements for a PUG which produces primarily subpart FFFF products. The proposed amendments would also clarify that if the source so chooses, equipment that is part of a PUG in which a MON product is the primary product must comply with the MON by the MON compliance

date, not subpart HHHHH by the subpart HHHHH compliance date.

Finally, we are also proposing to clarify what operations by end users are exempt from HHHHH. An end user is someone who applies a coating to substrate. In the preamble to the final rule we stated the final rule does not apply to end user preparation of the coating products for application by the end user (68 FR 69164). We are proposing to add another exemption for operations that modify a purchased coating prior to application at the purchasing facility. This exemption would apply only if the purchased product is already a coating that an end user could apply as purchased.

II. How are we proposing to amend 40 CFR part 63, subpart HHHHH?

A. Definition of Coating and Applicability

We are amending the definition of coating to clarify that products of reaction and separation, such as polymers, resins, and synthetic organic chemicals, are not covered by the final rule. In the final rule coating means 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. Almost all affected coating manufacturing operations are described by NAICS codes 325510 (paints and coatings), 325520 (adhesives and sealants), and 325910 (inks). Coatings are typically a product of mechanical processing, for example, paint formulating involves three basic steps: Dispersing of raw materials, tinting and thinning, and filling and packaging. Miscellaneous coatings do not include coating products described by other NAICS codes unless the coating products are produced using mixing and blending type of processes. Coating manufacturing uses materials that have been manufactured and stored prior to mixing and blending.

In addition to changing the definition of "coating," we are also proposing a change to 40 CFR 63.7985 to clarify the types of operations by end users that are exempt. An end user is someone who applies a coating to substrate. In section IV.A of the preamble to the final rule, we stated: "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). To implement this exemption, we added 40 CFR 63.7985(d)(2), which defined "affiliated operations" at sources that are subject to certain surface coating rules (*i.e.*, subparts KK, GG, JJJJ, MMMM, and

SSSS of 40 CFR part 63). These operations had been examined during the development of the five surface coating rules. We also noted in the preamble to the final rule that similar operations at sources subject to other surface coating rules may be exempt because 40 CFR 63.7985(a)(4) specifies that subpart HHHHH applies only to operations that are not part of an affected source under another subpart of part 63. The final rule, however, does not specifically exempt any operations at sources that are not subject to another subpart of part 63. Thus, to be consistent with our position that subpart HHHHH does not apply to activities conducted by end users of coating products in preparation for application, we are proposing to add another exemption in 40 CFR 63.7985(d). The proposed paragraph (5) in this section would exempt operations that modify a purchased coating prior to application at the purchasing facility. This exemption would apply only if the purchased product is already a coating that an end user could apply as purchased. Operations by an end user to modify such a coating by mixing with additives, perhaps to adjust the viscosity or change the color tint, would be exempt. Note that the modification operations also must be conducted at the source where the modified coating will be applied; modifications at a central location with the modified coating being shipped to multiple facilities within a company would not be exempt. We are specifically requesting comments on the provisions to exempt operations conducted by end users. For example, we are interested in descriptions of activities conducted by end users that are not subject to surface coating rules, including estimates of hazardous air pollutant emissions. We are also interested in alternative suggestions for rule language to achieve our objective of exempting operations by end users that are related to application of premanufactured coating rather than coating manufacturing.

B. Process Unit Groups

In addition, we are amending the final rule to reference the requirements of subpart FFFF for subpart HHHHH coating operations included in a PUG developed under subpart FFFF. According to 40 CFR 63.2535(l)(3)(i) of subpart FFFF, if the primary product of the PUG is subject to subpart FFFF, then compliance with subpart FFFF for all process units in the PUG constitutes compliance with the other part 63 rule. By referencing subpart FFFF, we are clarifying the compliance date for equipment at sources that choose to

demonstrate compliance with subpart HHHHH through compliance with 40 CFR 63.2535(l)(3)(i) of subpart FFFF.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

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

B. Paperwork Reduction Act

The proposed amendments impose no new information collection requirements on the industry. The proposed amendments clarify applicability of the final rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. These changes have the potential to result in minor reductions in the information collection burden, therefore, the Information Collection Request (ICR) has not been revised.

OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060-0535 (EPA ICR number 2115.01). A copy of the OMB approved ICR may be obtained from Susan Auby, by mail at the Office of Environmental

Information, Collection Strategies Division; EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. Include the ICR or OMB number in any correspondence.

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

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

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 will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business according to the Small Business Administration; (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.

For sources subject to this proposed rule, the relevant NAICS and associated employee sizes are listed below:

NAICS 32551—Paint and Coatings Manufacturing—500 employees or fewer.

NAICS 32552—Adhesives and Sealants Manufacturing—500 employees or fewer.

NAICS 32591—Printing Ink Manufacturing—500 employees or fewer.

After considering the economic impacts of today's proposed amendments on small entities, I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. In addition, the proposed amendments will clarify the compliance date for certain equipment that is part of a chemical manufacturing process unit that is also used to produce a coating.

We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small

governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments clarify applicability of the rule and extend the compliance date for owners and operators of certain coating manufacturing equipment. Therefore, the proposed amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to the Executive Order because they are based on technology performance and not health or safety risks.

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

The proposed amendments do not constitute a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)) because the proposed amendments are not likely to have a significant adverse effect on the

supply, distribution, or use of energy. Further, we have concluded that the proposed amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104-113), 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

During the rulemaking, EPA conducted searches to identify VCS in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. EPA-HQ-OAR-2003-0178). The proposed amendments do not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional VCS for the proposed amendments.

List of Subjects in 40 CFR Part 63

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

Dated: May 11, 2006.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart HHHHH—[Amended]

2. Section 63.7885 is amended by revising paragraph (d) introductory text and by adding paragraph (d)(5) to read as follows:

§ 63.7985 Am I subject to the requirements in this subpart?

* * * * *

(d) The requirements for miscellaneous coating manufacturing

sources in this subpart do not apply to operations described in paragraphs (d)(1) through (5) of this section.

* * * * *

(5) Modifying a purchased coating in preparation for application at the purchasing facility.

* * * * *

3. Section 63.7995 is amended by adding introductory text to read as follows:

§ 63.7995 When do I have to comply with this subpart?

Except as specified in § 63.8090, you must comply with this subpart according to the requirements of this section.

* * * * *

4. Section 63.8090 is amended by adding paragraph (c) to read as follows:

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(c) *Compliance with 40 CFR part 63, subpart FFFF.*

After the compliance dates specified in § 63.7995, an affected source under this subpart HHHHH that includes equipment that is also part of an affected source under 40 CFR part 63, subpart FFFF is deemed in compliance with this subpart HHHHH if all of the conditions specified in paragraphs (c)(1) through (5) of this section are met.

(1) Equipment used for both miscellaneous coating manufacturing operations and as part of a miscellaneous organic chemical manufacturing process unit (MCPU), as defined in 40 CFR 63.2435, must be part of a process unit group developed in accordance with the provisions in 40 CFR 63.2535(l).

(2) For the purposes of complying with § 63.2535(l), a miscellaneous coating manufacturing “process unit” consists of all coating manufacturing equipment that is also part of an MCPU in the process unit group. All miscellaneous coating manufacturing operations that are not part of a process unit group must comply with the requirements of this subpart HHHHH.

(3) The primary product for a process unit group that includes miscellaneous coating manufacturing equipment must be organic chemicals as described in § 63.2435(b)(1).

(4) The process unit group must be in compliance with the requirements in 40 CFR part 63, subpart FFFF as specified in § 63.2535(l)(3)(i) no later than the applicable compliance dates specified in § 63.2445.

(5) You must include in the notification of compliance status report

required in § 63.8070(d) the records as specified in § 63.2535(l)(1) through (3).

5. Section 63.8105 is amended by revising the definition for a “Coating” in paragraph (g) introductory text to read as follows:

§ 63.8105 What definitions apply to this subpart?

* * * * *

(g) * * *

Coating means a material such as 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, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coating does not include materials made in processes where a formulation component is synthesized by chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating, where the synthesized or separated component is not stored prior to formulation. Typically, coatings include products described by the following North American Industry Classification System (NAICS) codes, code 325510, Paint and Coating Manufacturing, code 325520, Adhesive and Sealant Manufacturing, and code 325910, Ink Manufacturing.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1488-P2]

RIN 0938-AO12

Medicare Program; Hospital Inpatient Prospective Payment Systems Implementation of the Fiscal Year 2007 Occupational Mix Adjustment to the Wage Index

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the methodology for calculating the occupational mix adjustment announced in the Fiscal Year (FY) 2007 Hospital Inpatient Prospective Payment System (IPPS) proposed rule by applying the occupational mix