

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 17, 2010.

**Carol Rushin,**

*Deputy Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

#### Subpart G—Colorado

■ 2. Section 52.352 is added to subpart G to read as follows:

##### § 52.352 Interstate transport.

Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding the 1997 8-Hour Ozone Standard for the “significant contribution” requirement, as adopted by the Colorado Air Quality Control Commission on December 30, 2008, State effective January 30, 2009, and submitted by the Governor’s designee on June 18, 2009.

[FR Doc. 2010–13050 Filed 6–2–10; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA–HQ–OAR–2008–0053; FRL–9158–1]

RIN 2060–AN47

### National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing; Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amendments to the paints and allied products manufacturing area source rule. With this direct final rule, EPA is amending the definition of “material containing hazardous air pollutants.” It was not EPA’s intent to omit the part of this definition that addresses non-carcinogens, and this omission could potentially and erroneously include facilities as applicable to the rule when they should not be covered.

This action clarifies text of the National Emission Standards for Hazardous Air Pollutants: Paints and Allied Products Manufacturing Area Source Standards which was published on December 3, 2009. This action will not change the level of health protection the final rule provides or the standards and other requirements established by the rule.

**DATES:** This direct final rule is effective on September 16, 2010 without further notice, unless EPA receives relevant adverse comment by July 19, 2010. If EPA receives relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0053, by one of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov): Follow the instructions for submitting comments.
- **Agency Web site:** [www.epa.gov/oar/docket.html](http://www.epa.gov/oar/docket.html). Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- **E-mail:** [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include Docket ID No. EPA–HQ–OAR–2008–0053 in the subject line of the message.
- **Fax:** Send comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2008–0053.
- **Mail:** Area Source NESHP for Paints and Allied Products Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- **Hand Delivery:** EPA Docket Center, Public Reading Room, EPA West, Room

3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0053. 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 and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** 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>. 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 form. Publicly available docket materials are available either electronically through <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.

**FOR FURTHER INFORMATION CONTACT:** Melissa Payne, Regulatory Development and Policy Analysis Group, Office of Air Quality Planning and Standards (C404-05), Environmental Protection Agency, Research Triangle Park, NC 27711. Telephone number: (919) 541-3609; fax number: (919) 541-0242; e-mail address: [payne.melissa@epa.gov](mailto:payne.melissa@epa.gov).

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

- I. Why is EPA using a direct final rule?
- II. Does this action apply to me?
- III. Where can I get a copy of this document?
- IV. Why are we amending the rule?
- V. What amendments are we making to the rule?
- VI. 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
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

**I. Why is EPA using a direct final rule?**

We are publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. This action amends the definition of “material containing HAP” to include non-carcinogens in quantities of 1.0 percent by mass or more. It was the intent of EPA to include this complete definition, but we inadvertently omitted the language regarding the 1.0 percent level for non-carcinogens, as defined by the Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.1200(g).

It was not EPA’s intent to omit the part of this definition that addresses non-carcinogens, and this omission could potentially and erroneously include facilities as applicable to the rule that are not part of the source category as defined in the inventory, which took into account the Toxics Release Inventory (TRI) *de minimis* thresholds.

Because this is an amendment of regulatory language through a rule action, a rule redline has been created of the current rule with the amendments, and has been placed in the docket to aid the public’s ability to comment on the regulatory text. If we receive relevant adverse comment on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect. Any parties interested in commenting must do so at this time.

**II. Does this action apply to me?**

*Regulated Entities.* The regulated categories and entities potentially affected by the final rule include:

Category	NAICS code <sup>1</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.

<sup>1</sup> North American Industry Classification System.

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 CCCC (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).

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

*Electronic Access.* In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web

(WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final 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.

**IV. Why are we amending the rule?**

Our intention in this area source rule was to reflect the TRI *de minimis* thresholds for both carcinogens (0.1 percent HAP concentration) and non-carcinogens (1.0 percent HAP concentration) in the definition of “material containing HAP” however, only the threshold for carcinogens is currently reflected. To correct this error, we are amending the rule to add the 1.0

percent concentration threshold for non-carcinogens.

These concentration levels are consistent with the OSHA Hazard Communication Standard requirements for development of a Material Safety Data Sheet (MSDS), which is how paints and allied products manufacturers receive information on the toxicity of the raw materials they use (See 29 FR 1910.1200(g)). The concentration level for hazardous chemicals is 1.0 percent, unless the chemical is an OSHA-defined carcinogen. The concentration level for OSHA-defined carcinogens is 0.1 percent. We inadvertently omitted mentioning the 1.0 percent for non-carcinogens portion of the definition in the definition for “material containing HAP” in the area source standards for Paints and Allied Products Manufacturing (40 FR 63.11607).

The amendment will not change the level of health protection the rule provides or the standards established by the rule. To quote the TRI rule that codified the concentration levels, "EPA does not expect that the processing and use of mixtures containing less than the *de minimis* concentration would, in most instances, contribute significantly to the threshold determinations or releases of listed toxic chemicals from any given facility." (53 FR 4509). In other words, mixtures with concentration levels under the *de minimis* levels are not concentrations of concern under TRI.

Furthermore, this amendment will accurately reflect the regulated source category, as non-carcinogens with less than 1.0 percent by mass were not intended to be regulated as part of the source category, because the source category as defined excluded sources below this level. Also, the complete *de minimis* threshold definition may encourage manufacturers to replace some carcinogenic raw materials with noncarcinogenic raw materials. No costs or other impacts are associated with this amendment.

#### V. What amendments are we making to the rule?

On December 3, 2009 the EPA published the national emission standards for hazardous air pollutants (NESHAP) for area source paints and allied products manufacturing facilities as subpart CCCCCC in 40 CFR part 63 (74 FR 63504). This action corrects the error in this regulation.

As currently written, 40 CFR 63.11607 defines "material 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, 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." The correct definition is, "\* \* \* in amounts greater than or equal to 0.1 percent by weight for carcinogens or 1.0 percent by weight for non-carcinogens, as shown in \* \* \* (emphasis added). This single change provides further clarification to the applicability provisions that are referenced in the final rule, as well as accurately reflecting the thresholds used in the TRI and reference at the time the source category was defined. This action notifies interested parties of the corrections.

#### VI. Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the Executive Order.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments result in no changes to the information collection requirements of the existing standards of performance and will have little or no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. However, OMB has previously approved the information collection requirements contained in the existing regulations (subpart CCCCCC, 40 CFR part 63) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0633 (ICR 23487.02). The OMB control numbers for EPA's regulations in 40 CFR 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 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 direct final rule on small entities, a 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 direct final rule on small

entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Although this direct final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. If adopted, the amended definition for "material containing HAP" will not adversely impact small entities, as the thresholds for the noncarcinogenic HAP are below the TRI levels of concern for this source category.

##### D. Unfunded Mandates Reform Act

This direct final 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 direct final is not expected to impact State, local, or tribal governments. 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.

##### E. Executive Order 13132: Federalism

This direct final rule 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 direct final rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this 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 direct 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 the final rule is based solely on technology performance.

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

This direct 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.

*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.

*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 direct final rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule will not change the level of health protection the rule provides to all affected populations, including any minority or low-income population.

*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 direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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 direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). This direct final rule will be effective on September 16, 2010.

**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 27, 2010.

**Lisa P. Jackson**,  
*Administrator.*

■ For the reasons set out in the preamble, title 40, chapter I, part 63, subpart CCCCCC 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 CCCCCC—[Amended]**

■ 2. Section 63.11607 is amended by revising the definition of *Material containing HAP* to read as follows:

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

\* \* \* \* \*

*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 for carcinogens, as defined by the Occupational Safety and Health Administration at 29 CFR 1910.1200(d)(4), or 1.0 percent by weight for non-carcinogens, 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.

\* \* \* \* \*

[FR Doc. 2010-13384 Filed 6-2-10; 8:45 am]

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**FEDERAL MARITIME COMMISSION**

**46 CFR Part 501**

[Docket No. 10-04]

RIN 3072-AC37

**Agency Reorganization and Delegations of Authority; Correction**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** The Federal Maritime Commission (FMC or Commission) published in the **Federal Register** of May 26, 2010, the Final Rule for the reorganization of the Commission. The reference to the Commission's Office of Consumer Affairs and Dispute Resolution Services was inadvertently omitted from Lines of Responsibility and Functions of the Chairman. This document corrects the omission. This correction also adds the legend for the Commission's Organization Chart.

**DATES:** Effective June 3, 2010.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5740, [GeneralCounsel@fmc.gov](mailto:GeneralCounsel@fmc.gov).

**SUPPLEMENTARY INFORMATION:** The FMC published a Final Rule in the **Federal Register** on May 26, 2010 (75 FR 29451) concerning the reorganization of the Commission. The reference to the Commission's Office of Consumer Affairs and Dispute Resolution Services was inadvertently omitted from the Lines of Responsibility and Functions of the Chairman in sections 501.4 and 501.5. This document corrects the omission. This correction also adds the legend for the Commission's Organization Chart in Appendix A to Part 501 to assist in the understanding of the chart.

**List of Subjects in 46 CFR Part 501**

Administrative practice and procedure, Authority delegations, Organization and functions, Seals and insignia.

■ For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR Part 501 as follows.