

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[OAR–2003–0005; FRL–8018–9]

RIN 2060–AM28

**National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans**

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for surface coating of metal cans, which were promulgated on November 13, 2003, under section 112 of the Clean Air Act (CAA). The direct final rule amendments correct errors and add clarification to sections of the rule. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** notice, we are publishing a separate document that will serve as the proposal to amend the NESHAP for surface coating of metal cans if adverse comments are filed. Any comments on the revisions should be directed to the proposed rule.

**DATES:** The direct final rule is effective on March 7, 2006 without further notice, unless EPA receives adverse written comment by February 6, 2006. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** indicating which amendments will become effective and which amendments are being withdrawn due to adverse comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR–2003–0005, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://docket.epa.gov/edkpub/index.jsp>. EDOCKET, EPA’s electronic public docket and comment system, is EPA’s preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov) and [almodovar.paul@epa.gov](mailto:almodovar.paul@epa.gov).
- Fax: (202) 566–1741 and (919) 541–5689.

• Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2003–0005, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

• Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2003–0005, 1301 Constitution Avenue, NW., Room B–108, 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. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**Instructions:** Direct your comments to Docket ID No. OAR–2003–0005. The 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://docket.epa.gov/edkpub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://regulations.gov), or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. OAR–2003–0005, Research Triangle Park, NC 27711. Clearly mark all of the information that you claim to be CBI. The EPA EDOCKET and the Federal [regulations.gov](http://regulations.gov) websites are “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://regulations.gov), your e-

mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://docket.epa.gov/edkpub/index.jsp>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hardcopy at the EPA Docket Center, Docket ID No. OAR–2003–0005, EPA West Building, 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 EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Mr. Paul Almodovar, EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Coatings and Consumer Products Group (C539–03), Research Triangle Park, NC 27711; telephone number (919) 541–0283; fax number (919) 541–5689; e-mail address: [almodovar.paul@epa.gov](mailto:almodovar.paul@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS* code	Examples of regulated entities
Industry .....	332431	Two piece beverage can facilities.
	332431, 332115, 332116, 332812, 332999	Three piece food can facilities, two piece D&I facilities, one piece aerosol can facilities, etc.
	332431	Can assembly facilities.

Category	NAICS* code	Examples of regulated entities
	332431, 332812	End manufacturing facilities.

\* 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 regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.3481 and 40 CFR 63.3482 of the Metal Can NESHAP (68 FR 64432, November 13, 2003). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Comments.* We are publishing the direct final rule amendments without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for surface coating of metal cans if adverse comments are filed. If we receive any adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective, and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's direct final rule for which we do not receive adverse comment will become effective on the previously mentioned date. We will not institute a second comment period on the direct final rule amendments. Any parties interested in commenting must do so at this time.

*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of the direct final rule amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 7, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule amendments may not be challenged separately in any civil or criminal

proceedings brought by EPA to enforce these requirements.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's direct final rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action 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.

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

- I. Background
- II. Amendments to 40 CFR Part 63, Subpart KKKK
- 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 Risks 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. Congressional Review Act

#### I. Background

EPA promulgated NESHAP for surface coating of metal cans on November 13, 2003 (68 FR 64432). The final rule (40 CFR part 63, subpart KKKK) includes standards for hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements related to the standards. After promulgation of the final rule, EPA received numerous questions relating to rule interpretation. The questions pointed out minor inconsistencies in some of the rule language and equations and identified areas where the rule requirements were not clear. Today's action includes direct final rule amendments that resolve inconsistencies and clarify rule language. None of the amendments will have any discernable effect on the stringency of the rule.

#### II. Amendments to 40 CFR Part 63, Subpart KKKK

In response to the proposed rule (68 FR 2110, January 15, 2003), EPA received a question related to compliance with parametric monitoring after testing but before the compliance date. In the final rule, EPA retained language from the proposed rule that requires affected sources to meet operating limits once the performance test used to establish those limits is complete, even if this occurs before the actual compliance date. EPA failed to make an intended change for the final rule to clarify that existing affected sources do not have to meet the operating limits prior to the compliance date. We have rewritten 40 CFR 63.3492 to state that new and reconstructed sources must meet the operating limits at all times after they have been established during the performance test, and existing sources must meet the operating limits at all times after the compliance date of November 13, 2006.

A question was raised concerning the definition of major source in the final rule versus the definition of major source in the General Provisions of 40 CFR part 63. To be consistent with the definition of major source in 40 CFR 63.2 of the General Provisions, we added the phrase "considering controls" to the description of a major source of HAP emissions in 40 CFR 63.3481(b).

A question was raised about the omission of clarifying text stating that all required calculations and compliance demonstrations may be performed with either metric or English units. In response, we have added language clarifying that all required calculations and all compliance demonstrations may be performed using either metric or English units in 40 CFR 63.3521, 63.3531, and 63.3541, as was intended.

A question was raised about the inclusion of cleaning materials in compliance calculations and equations. EPA erroneously made a change between the proposed and final rule that added cleaning materials as HAP-containing materials and included them in compliance calculations in 40 CFR 63.3541(h). Several other surface coating maximum achievable control technology (MACT) rules include cleaning materials as part of the calculation of total mass of organic HAP; however, as stated in the preamble

to the proposed rule (January 15, 2003, 68 FR 2130), emissions data collected for the metal can industry did not show any significant HAP associated with cleaning materials. Therefore, we have removed references to cleaning materials in the text in 40 CFR 63.3522 and 63.3561, as well as references to cleaning materials in equations which also resulted in modifications to the associated equation numbering in 40 CFR 63.3510, 63.3511, and 63.3512. The term "surface preparation" was removed in 40 CFR 63.3544(b), since this term is defined to mean the use of a cleaning material on a substrate. These revisions are discussed in more detail below.

Section 63.3522, paragraph (c) pertaining to identifying those coating operations for which affected sources use the compliant material option in the semiannual compliance report, was revised to exclude the application of cleaning materials as a coating operation.

Section 63.3561 includes the definition of terms used in this subpart, including the definition of "capture system" which is defined in terms of coatings and cleaning materials. Capture systems will not be required to collect emissions from cleaning materials, so the definition of "capture system" no longer contains a reference to cleaning materials.

Section 63.3510, paragraph (c)(8)(ii), pertaining to the notification of compliance requirements for affected sources using the emission rate without add-on controls option, was revised to reference Equations 1, 1A, 1B, 2, and 3 of 40 CFR 63.3531 for calculating the total mass of organic HAP emissions for each month, the total volume of coating solids used each month, and the 12-month organic HAP emission rate, respectively.

Section 63.3510, paragraph (c)(8)(iii) pertains to affected sources using the emission rate with add-on controls option. The notification of compliance will now require the use of Equations 1, 1A, and 1B of 40 CFR 63.3531 to calculate the total mass of organic HAP emissions for the coatings and thinners used each month. Also, the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices will now be performed by using Equations 1 and 1A through 1C of 40 CFR 63.3541, and Equations 2, 3, 3A, and 3B of 40 CFR 63.3541, as applicable.

In 40 CFR 63.3511, which pertains to reporting requirements for affected sources, references to equations to be used to calculate the total mass of

organic HAP emissions for the coatings and thinners used each month were revised in the second sentence of paragraph (a)(6)(ii) to include Equations 1, 1A, 1B, 2, and 3 in 40 CFR 63.3531; and in the second sentence of paragraph (a)(7)(ii) to include Equations 1, 1A, and 1B of 40 CFR 63.3531. In addition, the calculation for the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices will now use Equations 1 and 1A through 1C of 40 CFR 63.3541, and Equations 2, 3, 3A, and 3B of 40 CFR 63.3541, as applicable.

Section 63.3512 contains recordkeeping requirements. References to each equation were revised in paragraph (c)(3) to include Equations 1, 1A, 1B, and 2 of 40 CFR 63.3531 to be used to calculate the total mass of organic HAP emissions for the coatings and thinners used each month for the emission rate without add-on controls option; paragraph (c)(4)(i) was revised to include Equations 1, 1A, and 1B of 40 CFR 63.3531 to be used to calculate the total mass of organic HAP emissions for the coatings and thinners used each month; and paragraph (c)(4)(iii) was revised to include Equations 1 and 1A through 1C, 2, 3, 3A, and 3B of 40 CFR 63.3541 to be used to calculate the mass of organic HAP emission reduction by emission capture systems and add-on control devices.

Section 63.3544, paragraph (b), pertains to measuring capture efficiency during a production run of at least 3 hours and up to 8 hours, where the production run is defined as the time required for a single part to go from the beginning to the end of production. The term production run was redefined to exclude surface preparation activities which involve the use of cleaning materials.

EPA received comments requesting that it include six additional cross-references to the overall subcategory emission limit (OSEL) in the notification, reports, and records sections of this subpart, in 40 CFR 63.3510, 63.3511, and 63.3512, respectively. The OSEL is a 12-month alternative emission limit that can be used if the affected source applies coatings in more than one coating type segment within a subcategory and can be calculated by using Equation 4 in 40 CFR 63.3531(i). We have rewritten five sentences to reference OSEL Equation 4 in addition to the existing formula references and added one new sentence. The same five sentences were also affected by the deletion of the reference to cleaning materials, as discussed above.

A comment was made pertaining to remaining references to 40 CFR 63.3547(g) and 63.3557(g), paragraphs pertaining to requirements for continuous parameter monitoring for emission rate with the add-on controls option and for the control efficiency/outlet concentration option, respectively, that appeared in the proposed rule but were not included in the final rule. We are removing the remaining references to these paragraphs in 40 CFR 63.3547(a) and 63.3557(a). A similar reference to 40 CFR 63.3546(g) remained in Table 4 to Subpart KKKK of Part 63, Item 8.a.i, was also removed.

A comment was made pertaining to redundant language in 40 CFR 63.3547(a)(1) and 63.3557(a)(1), pertaining to continuous parameter monitoring system (CPMS) frequency of data collection. These sections state that the CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. They then state that you must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour. The second sentence is redundant and is now removed from each section.

A comment was made pertaining to the need to clarify the frequency of data collection for CPMS for permanent total enclosure (PTE) capture systems in Table 4 to Subpart KKKK of Part 63, Item 7, and the number of data points needed to establish the 3-hour average for the non-PTE emission capture operating parameters in Table 4, Item 8. For emission capture systems and add-on control devices, the frequency of data collection and the number of data collection points is specified in 40 CFR 63.3547(a)(1) and (2) and 40 CFR 63.3557(a)(1) and (2), which state that the CPMS must complete a minimum of one cycle of operation for each successive 15-minute period, and the average of all recorded readings must be determined for each successive 3-hour period. These sections apply to emission capture systems (PTE and non-PTE) and add-on control devices. We are, therefore, transferring this language and references to 40 CFR 63.3547(a)(1) and (2) and 40 CFR 63.3557(a)(1) and (2) to Table 4 to Subpart KKKK of Part 63, Items 7 and 8, for clarification.

A question was raised as to whether a bypass line valve indicator or a damper indicator would be acceptable in place of the capture system bypass line flow indicator required in paragraph (b)(1) of 40 CFR 63.3547. The alternate indicators would meet the CPMS requirements by recording the position of the bypass valve damper at least once every 15 minutes to ensure

the bypass line is in the closed position and would not divert emissions away from the add-on control device directly to the atmosphere. We are, therefore, modifying the text to add the two alternate indicators.

A question was raised as to whether static pressure could be measured at the oxidizer inlet as an alternative to the requirement to measure the static pressure in each capture system duct as required by Table 4 to Subpart KKKK of Part 63, Item 8, to show that the capture system is working. EPA agrees that this approach would be acceptable, but consider it critical to address the position of the pressure measurement relative to the flow inducer and that "at the inlet of the oxidizer" is not descriptive enough. We, therefore, added new language requiring measurement of static pressure "upstream of the fan" in the duct of each capture device or "upstream of the fan that is common to multiple capture devices" versus "at the inlet of the oxidizer." Language was also added to differentiate between smaller safety fans (on the outlet of ovens that also act as capture devices) and fans that serve as the primary air movers. This allows for the affected source to monitor pressure downstream of the safety fan, but upstream of the primary fan. Language was also added to refer back to the required performance testing in 40 CFR 63.3546(g) in order to establish the limits for gas volumetric flow rate and duct static pressure. Conforming changes were then made to 40 CFR 63.3546(g).

### III. Statutory and Executive Order Reviews

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

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

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

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

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

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

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

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* OMB approved the information collection request (ICR) for the NESHAP for metal can surface coating pursuant to the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060-0541 (EPA ICR No. 2079.02). A copy of the original ICR may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672. You may also download a copy from the internet at <http://www.epa.gov/icr>. Include the ICR 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 in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory

flexibility analysis in connection with the direct final rule amendments.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations 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 today's direct final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that the direct final rule amendments will not impose any new requirements on small entities.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 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 to the private sector, of \$100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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.

EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The direct final rule amendments apply only to affected sources in the metal can industry and clarify and correct errors in the final rule and, therefore, add no additional burden on sources. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The direct final rule amendments apply only to affected sources in the metal can industry and clarify and correct errors in the final rule. Thus, the direct final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (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 direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No metal can production facilities subject to the direct final rule amendments are owned or operated by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the direct final rule amendments. Furthermore, the direct final rule amendments do not require these governments, or anyone else, to take on any new responsibilities. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (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 direct final rule amendments do not have tribal implications as specified in Executive Order 13175. They 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, because we are not aware of any Indian tribal governments or communities affected by the direct final rule amendments. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks 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, the Agency 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 direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

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

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 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. The 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 the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments do not involve technical standards; therefore, EPA is not adopting any VCS.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct final rule amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule amendments are effective on March 7, 2006.

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

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

Dated: December 29, 2005.

**Stephen L. Johnson,**  
*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 KKKK—[AMENDED]**

■ 2. Section 63.3481 is amended by revising the second sentence in paragraph (b) to read as follows:

**§ 63.3481 Am I subject to this subpart?**

\* \* \* \* \*

(b) \* \* \* A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

\* \* \* \* \*

■ 3. Section 63.3492 is amended by revising the third sentence in paragraph (b) to read as follows:

**§ 63.3492 What operating limits must I meet?**

\* \* \* \* \*

(b) \* \* \* You must establish the operating limits during the initial performance test according to the requirements in § 63.3546 or § 63.3556. New and reconstructed sources must meet the operating limits at all times after they have been established during the performance test, and existing sources must meet the operating limits at all times after the compliance date.

\* \* \* \* \*

■ 4. Section 63.3510 is amended by revising paragraphs (c)(8)(ii) and (iii) to read as follows:

**§ 63.3510 What notifications must I submit?**

\* \* \* \* \*

(c) \* \* \*

(8) \* \* \*

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month, the calculation of the total volume of coating solids used each month, and the calculation of the 12-month organic HAP emission rate, using Equations 1, 1A, 1B, 2, and 3, respectively, of § 63.3531, or Equation 4 of § 63.3531, if applicable.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, and 1B of § 63.3531; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations

1 and 1A through 1C of § 63.3541, and Equations 2, 3, 3A, and 3B of § 63.3541, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3541, as applicable; and the calculation of the 12-month organic HAP emission rate, using the applicable equation, Equation 5 of § 63.3541 or Equation 4 of § 63.3531.

\* \* \* \* \*

■ 5. Section 63.3511 is amended by revising the second sentence of paragraph (a)(6)(ii) and the second sentence of paragraph (a)(7)(ii) to read as follows:

**§ 63.3511 What reports must I submit?**

(a) \* \* \*

(6) \* \* \*

(ii) \* \* \* You must provide the calculations for Equations 1, 1A, 1B, 2, and 3 in § 63.3531 or Equation 4 in § 63.3531, if applicable; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3).

\* \* \* \*

(7) \* \* \*

(ii) \* \* \* You must provide the calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, and 1B of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1C of § 63.3541, and Equations 2, 3, 3A, and 3B of § 63.3541, as applicable.

\* \* \* \*

■ 6. Section 63.3512 is amended by:

■ a. Revising paragraphs (c)(3), (c)(4) introductory text, (c)(4)(i), and (c)(4)(iii); and

■ b. Adding paragraph (c)(4)(vi) to read as follows:

\* \* \* \*

■ 7. Section 63.3521 is amended by adding a sentence to the end of the introductory text to read as follows:

■ 8. Section 63.3522 is amended by revising the second sentence in paragraph (c) to read as follows:

**§ 63.3512 What records must I keep?**

\* \* \* \* \*

(c) \* \* \*

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic

HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, 1B, and 2 of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3531; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3531, or Equation 4 in § 63.3531, if applicable.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (vi) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings and thinners used each month, using Equations 1, 1A, and 1B of § 63.3531 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3531(e)(3).

\* \* \* \* \*

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1C of § 63.3541, and Equations 2, 3, 3A, and 3B of § 63.3541, as applicable.

\* \* \* \* \*

(vi) The OSEL calculation, if applicable, using Equation 4 of § 63.3531.

\* \* \* \* \*

■ 7. Section 63.3521 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 63.3521 How do I demonstrate initial compliance with the emission limitations?**

\* \* \* All required calculations and compliance demonstrations may be performed with either metric or English units.

\* \* \* \* \*

■ 8. Section 63.3522 is amended by revising the second sentence in paragraph (c) to read as follows:

**§ 63.3522 How do I demonstrate continuous compliance with the emission limitations?**

\* \* \* \* \*

(c) \* \* \* If there were no deviations from the emission limitations set forth in § 63.3490, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limit in § 63.3490, and you used no thinner that contained

organic HAP, as determined according to § 63.3521(a).

\* \* \* \* \*

■ 9. Section 63.3531 is amended by adding a sentence to the end of the introductory text to read as follows:

**§ 63.3531 How do I demonstrate initial compliance with the emission limitations?**

\* \* \* All required calculations and compliance demonstrations may be performed with either metric or English units.

\* \* \* \* \*

■ 10. Section 63.3541 is amended by:

- a. Adding a sentence to the end of paragraph (a);
- b. Revising the third sentence and Equation 1 (defined terms) of paragraph (h);
- c. Removing paragraph (h)(3) and Equation 1C and redesignating paragraph (h)(4) as (h)(3) and Equation 1D as Equation 1C, and revising the newly redesignated paragraph (h)(3); and
- d. Revising paragraph (i)(5) to read as follows:

**§ 63.3541 How do I demonstrate initial compliance?**

(a) \* \* \* All required calculations and compliance demonstrations may be performed with either metric or English units.

\* \* \* \* \*

(h) Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances. \* \* \* The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings and thinners that are used in the coating operation served by the emission capture system and add-on control device during each month. \* \* \*

\* \* \* \* \*

$H_{unc}$  = Total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg, as calculated in Equation 1C of this section.

\* \* \* \* \*

(3) Calculate the mass of organic HAP in the coatings and thinners used in the controlled coating operation during deviations specified in § 63.3542(c) and (d), using Equation 1C of this section.

$$H_{unc} = \sum_{h=1}^q (Vol_h)(D_h)(W_h) \quad (\text{Eq. 1C})$$

Where:

$H_{unc}$  = Total mass of organic HAP in the coatings and thinners used during all deviations specified in § 63.3542(c) and (d) that occurred during the month in the controlled coating operation, kg.

$Vol_h$  = Total volume of coating or thinner, h, used in the controlled coating operation during deviations, liters.

$D_h$  = Density of coating or thinner, h, kg per liter.

$W_h$  = Mass fraction of organic HAP in coating or thinner, h, kg organic HAP per kg coating.

q = Number of different coatings or thinners.

(i) Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances. \* \* \*

(5) Measure the volume of each coating and thinner used in the coating operation controlled by the solvent recovery system during the month, liters.

\* \* \* \* \*

■ 11. Section 63.3544 is amended by revising the fifth sentence in paragraph (b) to read as follows:

**§ 63.3544 How do I determine the emission capture system efficiency?**

\* \* \* \* \*

(b) \* \* \* For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, and includes drying or curing time, but excludes surface preparation activities.

\* \* \* \* \*

■ 12. Section 63.3546 is amended by revising paragraphs (g)(1) and (g)(2) as follows:

**§ 63.3546 How do I establish the emission capture system and add-on control device operating limits during the performance test?**

\* \* \* \* \*

(g) \* \* \*

(1) During the capture efficiency determination required by § 63.3540 and described in §§ 63.3543 and 63.3544, you must monitor and record either the gas volumetric flow rate at a location upstream of the control device, or the duct static pressure at a location upstream of the primary fan in each duct of each capture device or upstream of the fan that is common to multiple capture devices at least once every 15 minutes during each of the three test runs.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device or system of multiple

capture devices. The average gas volumetric flow rate is the minimum operating limit for that specific capture device or system of multiple capture devices. The average duct static pressure is the maximum operating limit for that specific capture device or system of multiple capture devices.

■ 13. Section 63.3547 is amended by:

- a. Revising the first sentence of paragraph (a) introductory text,
- b. Removing the second sentence of paragraph (a)(1), and
- c. Revising paragraph (b)(1) to read as follows:

**§ 63.3547 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) General. You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), and (f) of this section according to paragraphs (a) (1) through (6) of this section. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. The flow indicator shall be installed at the entrance to any bypass line. Alternatively, install, maintain, and operate a bypass line valve indicator or damper indicator that indicates valve position.

\* \* \* \* \*

■ 14. Section 63.3557 is amended by revising the first sentence of paragraph (a) introductory text and removing the second sentence of paragraph (a)(1) to read as follows:

**§ 63.3557 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?**

(a) General. You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), and (f) of this section according to paragraphs (a)(1) through (6) of this section. \* \* \*

\* \* \* \* \*

■ 15. Section 63.3561 is amended by revising the definition of "capture system" to read as follows:

**§ 63.3561 What definitions apply to this subpart?**

\* \* \* \* \*

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings, both at the point of application and at subsequent points where emissions from the coatings occur, such as flash-off, drying, or curing.

\* \* \* \* \*

■ 16. Table 4 to Subpart KKKK of Part 63 is amended by redesignating Item

7.a.ii as 7.a.iii and adding a new Item 7.a.ii; and revising newly redesignated Item 7.a.iii, and Items 8.a introductory text, 8.a.i, 8.a.ii, and 8.a.iii to read as follows:

**Table 4 to Subpart KKKK of Part 63—  
Operating Limits if Using the Emission  
Rate With Add-On Controls Option or  
the Control Efficiency/Outlet  
Concentration Compliance Option**

7. \* \* \*

a. \* \* \*

i. \* \* \*

ii. Reducing the data collected each successive 15-minute period to 3-hour block averages according to § 63.3547(a)(1) and (2) or § 63.3557(a)(1) and (2), as applicable; and

iii. Maintaining the 3-hour block average facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial

velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.

8. \* \* \*

a. The average gas volumetric flow rate at a location upstream of the control device, or duct static pressure at a location upstream (i.e., vacuum side) of the primary fan in each duct of each capture device or upstream of the fan that is common to multiple capture devices in each 3-hour period must not fall below the average volumetric flow rate or above the duct static pressure limit established for that capture device in accordance with § 63.3546 or § 63.3556, as applicable.

i. Measuring the gas volumetric flow at a location upstream of the control device, or duct static pressure at a location upstream (i.e., vacuum side) of the primary fan in each duct of each capture device upstream or upstream of

the fan that is common to multiple capture devices; and

ii. Reducing the data collected each successive 15-minute period to 3-hour block averages according to § 63.3547(a)(1) and (2) or § 63.3557(a)(1) and (2), as applicable; and

iii. Maintaining the 3-hour block average gas volumetric flow rate at a location upstream of the control device, or duct static pressure at a location upstream (i.e., vacuum side) of the primary fan in each duct of each capture device or upstream of the fan that is common to multiple capture devices at or above the average gas volumetric flow rate or below the duct static pressure limit established in accordance with the performance test described in § 63.3546(g).

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